



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

September 5, 2008

Memorandum for: Deputy Commissioner, Trials

Re: Detective John Holbert  
Tax # 892406  
Property Clerk Division  
Disciplinary Case No. 81323/05

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on January 28, 2008, and was charged with the following:

**DISCIPLINARY CASE NO. 81323/05**

1. Said Detective John Holbert, while assigned to the 123 Detective Squad, while on duty, on or about and between October 23, 2003 and October 27, 2003, in the vicinity of Staten Island University Hospital, having become aware of serious misconduct involving another member of the service, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required.

P.G. 203-10, Page 1-2      **ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBER OF THE SERVICE**

2. Said Detective John Holbert, while assigned to the Property Clerk Division, while on duty, on or about December 14, 2004 and June 21, 2005, did wrongfully and without just cause impede an official Department investigation in that he gave misleading answers to questions put to him during Official Department Interviews conducted pursuant to P.G. 206-13.

P.G. 203-10 Page 1, Paragraph 2 (D), 3      **PROHIBITED CONDUCT**

3. Said Detective John Holbert, while assigned to the 123 Detective Squad, while on duty, on or about January 29, 2004, in the vicinity of the 123 Detective Squad Room, having become aware of serious misconduct involving another member of the service, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required.

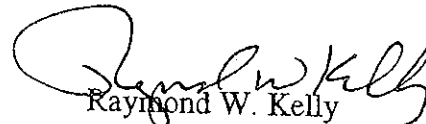
P.G. 207-21, Pages 1-2      **ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBER OF THE SERVICE**

DETECTIVE JOHN HOLBERT

DISCIPLINARY CASE # 81323/05

In a trial decision and Memorandum dated July 23, 2008, Assistant Deputy Commissioner Weisel found Detective John Holbert to be GUILTY of Specification Nos. 1 and 2 and NOT GUILTY of Specification No. 3 in Disciplinary Case No. 81323/05. Having read the Memorandum and analyzed the facts of the case, I approve of the disposition, but disapprove of the recommended penalty.

The Respondent does not have a prior formal disciplinary history, thus, his conduct in this matter must be viewed in light of his otherwise beneficial and productive service to the Department and to the community. A review of the individual underlying facts and specific circumstances within this case, taken concomitantly with the Respondent's noted service with the Department, is persuasive toward temperance against an outright dismissal from the Department. Therefore, the penalty for this disciplinary matter will be Dismissal from the NYPD, with judgment suspended for a period of 1 (one) year. During this one-year period, the Respondent will be on Dismissal Probation and may be dismissed by the Police Commissioner without a hearing. Additionally, the Respondent is to forfeit 30 (thirty) Vacation days.

  
Raymond W. Kelly  
Police Commissioner



POLICE DEPARTMENT

July 23, 2008

-----X  
In the Matter of the Charges and Specifications :

Case Nos. 79920/04 &  
81292/05

- against - :

Detective Richard Vecchio :

Tax Registry No. 913537 :

Fleet Services Division :

-----X  
At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable David S. Weisel  
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department: Harry Peters, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: Michael S. Berardino, Esq.  
Mangialardi & Berardino  
111 N. Central Avenue  
Suite 370  
Hartsdale, New York 10530

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038



POLICE DEPARTMENT

-----X  
In the Matter of the Disciplinary Proceedings :  
- against - : FINAL  
Detective Richard Vecchio : ORDER  
Tax Registry No. 913537 : OF  
Fleet Services Division : DISMISSAL  
-----X

Detective Richard Vecchio, Tax Registry No. 913537, Shield No. 4259, Social Security No. [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 79920/04 & 81292/05, as set forth on form P.D. 468-121, dated May 21, 2004 & September 12, 2005, respectively, and after a review of the entire record, has been found, in Disciplinary Case No. 79920/04, Guilty of Specification Nos. 1, 2, 4, 5, 6, 7, & 9 and Not Guilty of Specification Nos. 3 & 8; and, in Disciplinary Case No. 81292/05, Guilty of Specification Nos. 2, 3, 4, & 10; partially Guilty of Specification Nos. 6, 7, 8, & 9; and Not Guilty of Specification Nos. 1 & 5.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Richard Vecchio from the Police Service of the City of New York.

RAYMOND W. KELLY  
POLICE COMMISSIONER

EFFECTIVE: September 5, 2008



POLICE DEPARTMENT

July 23, 2008

-----X  
In the Matter of the Charges and Specifications : Case No. 81323/05  
- against - :  
Detective John Holbert :  
Tax Registry No. 892406 :  
Property Clerk Division :  
-----X

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable David S. Weisel  
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department: Harry Peters, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: James Moschella, Esq.  
Karasyk & Moschella, LLP  
225 Broadway – 32<sup>nd</sup> Floor  
New York, New York 10007

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

The above-named members of the Department appeared before me on January 28, 2008, January 29, 2008, January 30, 2008, February 20, 2008, and March 10, 2008, charged with the following:

Disciplinary Case No. 79920/04

1. Said Detective Richard Vecchio, assigned to the 123 Precinct Detective Squad, on or about January 29, 2004 through May 18, 2004 while on-duty, in Richmond County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did possess a photo of a defendant, known to this Department, exposing her pierced left breast.

P.G. 203-10, Page 1, Paragraph 4 – PUBLIC CONDUCT – PROHIBITED CONDUCT

2. Said Detective Richard Vecchio, assigned to the 123 Precinct Detective Squad, on or about May 18, 2004 while on-duty, in Richmond County, did wrongfully bring an alcoholic beverage into a Department Facility which was not in said Detective's scope of employment, to wit: said Detective did have an open bottle of Southern Comfort in his locked mail box, located inside the 123 Precinct Detective Squad.

P.G. 203-06, Page 1, Paragraph 2 – PERFORMANCE OF DUTY – PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

3. Said Detective Richard Vecchio, assigned to the 123 Precinct Detective Squad, on or about May 18, 2004 while on-duty, in Richmond County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did possess offensive materials, to wit: a pornographic magazine and pornographic playing cards, inside a Department facility.

P.G. 203-10, Page 1, Paragraph 4 – PUBLIC CONDUCT – PROHIBITED CONDUCT

4. Said Detective Richard Vecchio, while assigned to the 123 Precinct Detective Squad, while on duty, on or about and between October 23, 2003 and October 27, 2003, with intent to obtain a benefit or deprive another person of a benefit, did commit an act relating to his office but constituting an unauthorized exercise of his function, knowing such to be an unauthorized act, to wit: said Detective did take lewd pictures of a female, identity known to the Department, who was in a hospital bed during the taking of said photographs. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
New York State Penal Law 195.00 (1)

5. Said Detective Richard Vecchio, while assigned to the 123 Precinct Detective Squad, while of duty, on or about January 29, 2004, with intent to obtain a benefit or deprive another

person of a benefit, did commit an act relating to his office but constituting an unauthorized exercise of his official function knowing such to be an unauthorized act, to wit: said Detective did request a female, identity known to the Department to pull up her shirt, expose her breasts, and said Detective did take a photograph of said female's breast which had a nipple ring. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
New York State Penal Law 195.00 (1)

6. Said Detective Richard Vecchio, while assigned to the 123 Precinct Detective Squad, while on duty, on or about and between October 23, 2003 and October 27, 2003, did wrongfully and without just cause engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did take lewd pictures of a female, identity known to the Department, who was in a hospital bed during the taking of said photographs. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

7. Said Detective Richard Vecchio, while assigned to the 123 Precinct Detective Squad, while on duty, on or about January 29, 2004, did wrongfully and without just cause engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did request a female, identity known to this Department, to pull up her shirt, expose her breasts, and said Detective did take a photograph of said female's breast which had a nipple ring. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

8. Said Detective Richard Vecchio, while assigned to the 123 Precinct Detective Squad, while on duty, on or about and between October 23 and 27, 2003, and May 18, 2004, with intent to obtain a benefit or deprive another of a benefit, did commit an act relating to his office but constituting an unauthorized exercise of his function, knowing said to be an unauthorized act, to wit: said Detective did possess lewd and nude pictures of a female, identity known to this Department, who was in a hospital bed when said photographs were taken. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
New York State Penal Law 195.00 (1)

9. Said Detective Richard Vecchio, while assigned to the 123 Precinct Detective Squad, while on duty, on or about and between October 23, and 27, 2003, and May 18, 2004, did wrongfully and without just cause engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did possess lewd and nude photographs of a female, identity known to the Department, who was in a hospital bed when said photos were taken. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
New York State Penal Law 195.00 (1)

Disciplinary Case No. 81323/05

1. Said Detective John Holbert, while assigned to the 123 Detective Squad, while on duty, on or about and between October 23, 2003 and October 27, 2003, in the vicinity of Staten Island University Hospital, having become aware of serious misconduct involving another member of the service, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required. (*As amended*)

P.G. 203-10, Pages 1-2 – ALLEGATIONS OF CORRUPTION AND SERIOUS  
MISCONDUCT AGAINST MEMBER OF SERVICE

2. Said Detective John Holbert, while assigned to the Property Clerk Division, while on duty, on or about December 14, 2004 and June 21, 2005, did wrongfully and without just cause impede an official Department investigation in that he gave misleading answers to questions put to him during official Department interviews conducted pursuant to PG 206-13.

P.G. 203-10, Page 1, Paragraph 2 (D), 3 – PUBLIC CONTACT – PROHIBITED  
CONDUCT

3. Said Detective John Holbert, while assigned to the 123 Detective Squad, while on duty, on or about January 29, 2004, in the vicinity of the 123 Detective Squad Room, having become aware of serious misconduct involving another member of the service, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required.

P.G. 207-21, Pages 1-2 – ALLEGATIONS OF CORRUPTION AND SERIOUS  
MISCONDUCT AGAINST MEMBER OF SERVICE

Disciplinary Case No. 81292/05

1. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, while on-duty, on or about September 8, 2005, was absent from his assignment without permission or police necessity, in that said Detective was observed at his residence during his tour by the Bureau integrity control officer.

P.G. 203-05, Page 1, Paragraph 2 – GENERAL REGULATIONS

2. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, while on-duty, on or about September 8, 2005, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective was at Staten Island Criminal Court for a criminal case where he is a defendant.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
P.G. 206-10, Page 2



3. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, while on-duty, on or about September 8, 2005, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective failed to sign out at the end of his tour.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

4. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, while on-duty, on or about September 8, 2005, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did use his personal vehicle.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

5. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, while on-duty, on or about September 8, 2005, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did sign out on the return roll call originally indicating that he ended his tour at 1600 hours, then changing the time to 1400 hours, when in fact he was observed by the Bureau integrity control officer at his residence.

P.G. 203-05, Page 1, Paragraph 4 – GENERAL REGULATIONS

6. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, while on-duty, on or about and between March 7, 2005 and August 15, 2005, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that on approximately ten (10) occasions, he improperly left his assigned command prior to the end of his tour without authorization or police necessity, totaling approximately eighteen (18) hours and forty (40) minutes, for which he received payment he was not entitled to receive, in the amount of \$631.82. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
N.Y.S Penal Law Sec. 155.25 – PETIT LARCENY

7. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, while on-duty, on or about and between March 7, 2005 and August 15, 2005, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that on approximately seven (7) occasions he improperly submitted overtime requests for a total of approximately nine (9) hours and thirty (30) minutes that said Detective did not perform, and for which he was paid \$490.96, although not entitled to said payment. *(As amended)*

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT  
New York State Penal Law 155.25 – PETIT LARCENY

8. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, while on-duty, on or about and between March 7, 2005 and August 15, 2005, did on approximately eight (8) occasions, improperly attend Staten Island Criminal Court for his personal case, without authorization or police necessity, totaling approximately sixty (60) hours and forty-five (45)

minutes for which he received payment from the New York City Police Department in the amount of \$2,056.99, which he was not entitled to. (*As amended*)

P.G. 206-10, Page 2 -- GRAND LARCENY -- FOURTH DEGREE  
N.Y.S Penal Law Sec 155.30

9. Said Detective Richard Vecchio, assigned to Counter Terrorism Division, on or about and between March 7, 2005 and August 15, 2005, while on duty, on approximately six (6) occasions, knowing that a written instrument contained a false statement of false information, said Detective did present said instrument to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant, to wit: said Detective did submit Overtime Slips (PD 138-064), which falsely represented that said Detective was performing and working overtime, when in fact he was not. (*As amended*)

PG 203-10 Page 1, Paragraph 5 -- PUBLIC CONTACT- PROHIBITED CONDUCT  
New York State Penal Law 175.30 -- OFFERING A FALSE INSTRUMENT -- FOR  
FILING -- SECOND DEGREE

10. Said Detective Richard Vecchio, assigned to the Counter Terrorism Division, on or about and between March 7, 2005 and August 15, 2005, while on duty, on approximately four (4) occasions, did, with intent to defraud, make or cause a false entry to be made in the business records of an enterprise, to wit: he entered or had someone else enter sign out times which were false. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 -- PUBLIC CONTACT -- PROHIBITED CONDUCT  
N.Y.S. Penal Law Section 175.05 (1) -- FALSIFYING BUSINESS RECORDS --  
SECOND DEGREE

The Department was represented by Harry Peters, Esq., Department Advocate's Office. Respondent Holbert was represented by James Moschella, Esq., and Respondent Vecchio was represented by Michael S. Berardino, Esq.

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

Disciplinary Case No. 79920/04: Vecchio – photographs  
Disciplinary Case No. 81323/05: Holbert

### DECISION

Respondent Holbert is found Guilty of Specifications 1 and 2, and Not Guilty of Specification 3. Respondent Vecchio is found Guilty of Specifications 1, 2, 4, 5, 6, 7, and 9, and Not Guilty of Specifications 3 and 8.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Kristina Sellers, Police Officer Cynthia Mazzuki, Deputy Inspector Terence Moore, Captain Philip Romanzi, Lieutenant Natalie Maldonado, Sergeant James Fox, and Sergeant Grace-Marie O'Connell as witnesses. Also introduced were the Official Department Interviews of Respondent Holbert, and five transcribed statements of S.L.:<sup>1</sup> two interviews with Internal Affairs Bureau (IAB) investigators, questioning by lawyers for the City of New York, and two criminal trials of Respondent Vecchio.

#### Kristina Sellers

Sellers was 22 years old and had worked for about eight months as an executive assistant to a Wall Street chief operating officer. She was also a student at John Jay College of Criminal Justice.

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<sup>1</sup> Initials have been used for the name of this person, who was a complaining witness in a rape case. See generally Civil Rights Law § 50-b (1).

Sellers admitted that for almost two years, she was a daily user of crack cocaine. Sellers conceded that she was unemployed at the time, but claimed that she "had my own money" and used "other people's money."

Sellers testified that she pleaded guilty in Staten Island Criminal Court, on one date, to one charge involving crack and another involving heroin. She was placed in October 2006 in a residential rehabilitation program for nine to twelve months. Sellers admitted that she lied to the Criminal Court judge in order to receive rehab. Sellers testified that she was an addict and needed help. The lie she told the judge was that she "was not in possession of heroin," but the people Sellers was with were in possession of the drug. She stated that she completed the rehab program and the convictions were sealed.

Sellers testified that on January 23, 2004, she had left her home and was traveling in her car on Huguenot Avenue toward the intersection of Hylan Boulevard on Staten Island. At the time, she was employed part-time at Toys"R"Us. Sellers asserted that she had not yet begun using crack at this time.

Sellers stated that she was stopped at a red light. Sellers testified that she thought the light had turned green, and put her foot on the gas pedal, but hit the car in front of her. She panicked and fled the scene. When Sellers arrived home, she lied to her parents, telling them that someone hit her car while she had parked and gone inside a store.

Sellers testified that around 4:30 or 4:45 p.m. on January 29, 2004, two detectives, the Respondents, came to her home. They said they were there regarding a motor vehicle accident, and asked to come inside and speak about the accident. Sellers let them in, but asked them to wait for her father to come home because he was the owner of the car involved.

During the approximately 10 to 15 minutes it took for Sellers's father to arrive home, Respondent Vecchio asked Sellers whether she was in school and if she was working. After Sellers's father came home, Respondent Vecchio said he needed to call the woman whose car Sellers had struck to see if she still wanted to prosecute. Respondent Vecchio left and engaged in a telephone call, and then came back and said that the woman wanted to press charges, so the detectives would have to bring Sellers to the precinct.

Sellers testified that the Respondents did not handcuff her when putting her in their vehicle. After they began driving, Sellers said, she and Respondent Vecchio spoke about the fact that [REDACTED] and [REDACTED] attended school together.

Once they arrived at the 123 Precinct, Respondent Vecchio handcuffed Sellers, telling her that it was procedurally required. Respondent Vecchio took her upstairs, where there were desks and a holding cell. Sellers described the holding cell as immediately to the left of the entrance to the room, which was slightly smaller than the Trial Room. Respondent Vecchio placed her in the cell, and her handcuffs were removed. Both Respondents went to their desks. Other officers were present in the room at various points.

Sellers testified that about 15 to 20 minutes later, Respondent Vecchio told her that he had to send some paperwork "to Albany," but that she "seemed like a nice lady," so he planned to write something nice and she might be released that night.

About 15 minutes later, Respondent Vecchio came back to the cell and told Sellers that he needed to fingerprint and photograph her. After fingerprinting Sellers, Respondent Vecchio took Sellers's mugshot, and noticed her nose ring. He asked her if she had tattoos or other piercings, "because he would have to take them for identification purposes just in case I would be brought in on another charge."

Sellers stated that in the holding cell, Respondent Vecchio took photographs of her nose piercing, a tattoo of a rainbow and cloud on her neck, a Chinese symbol on her lower back, a navel piercing, and a star motif on her toe (see Department Exhibits [DX] 2-6, photographs). Respondent Holbert was at his desk when these pictures were taken, but at other times he was walking around the room or left the room entirely. Respondent Holbert's desk was a few desks away from the holding cell.

Sellers asserted that Respondent Vecchio noticed her rainbow-cloud tattoo (DX-2), and, remarking that "the rainbow is the gay symbol," asked Sellers if she had "been with women before." On direct examination, Sellers contended that she answered Respondent Vecchio, "No." On cross-examination, Sellers first denied recalling that, during an interview with IAB, she said that she "wouldn't even dignify giving an answer to that question." Later, however, she admitted that she told IAB, "I just let it go. I didn't answer them."

About ten minutes later, Respondent Vecchio returned and told Sellers she could go home. Respondent Vecchio got a phone call, and when he hung up, he told Sellers that her parents were downstairs.

Respondent Vecchio told Sellers, however, that before he could release her, he needed to take a photograph of her nipple piercing. Sellers replied that "if it has to get done, I would take it." She viewed Respondent Vecchio as an authority figure, so "I am going to do what he says."

Sellers testified that Respondent Vecchio asked Respondent Holbert if he should take a photograph of her nipple piercing. Respondent Holbert answered that he should "if he feels he has to." Sellers also characterized Respondent Holbert's statement as, "If you think you have to take it." However, Sellers recalled that she stated in her IAB interview on May 13, 2004, that Respondent Holbert's remark was, "Yeah, why not?"

Sellers stated that it would be inaccurate if someone stated that Respondent Holbert asked her if she wanted copies of the nipple photograph e-mailed to her.<sup>2</sup>

Sellers testified that Respondent Vecchio escorted her to what she believed was the lunch room, on the same floor as the holding cell. Sellers testified that one would not have to pass Respondent Holbert's desk in order to get to the lunch room.

After taking the photograph (DX-1), Sellers said, Respondent Vecchio told her that he used to have a pierced nipple. He also displayed a gold barbell piercing on his tongue and had a right earring. Sellers asserted that Respondent Vecchio asked her why she had a band-aid over her nipple. Sellers said she was covering it, but did not elaborate and Respondent Vecchio did not inquire further. The taking of the photographs took "a matter of seconds," and otherwise, Respondent Vecchio made no "lewd," "lascivious," or "sexual" comments when taking the picture. Respondent Vecchio then escorted Sellers downstairs, where her parents were waiting, and she went home with them.

Sellers asserted that she told her parents that night about the pictures Respondent Vecchio had taken. She consulted an attorney, Brett Klein, about the matter. Sellers was referred to Klein through the attorney on her criminal case, Mario Gallucci.

Klein contacted IAB, and on May 18, 2004, Sellers made a controlled telephone call to Respondent Vecchio (see DX-7, audiotape recording; DX-7a, tr. as aid to Ct.). The purpose of the call, made from Klein's office, was to find out where the pictures were. Klein and Detective Straffacio were present during the call.

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<sup>2</sup> The original call out to IAB by Sellers's attorney, Brett Klein, alleged that the unidentified partner of Respondent Vecchio asked Sellers, as Respondent Vecchio was leading her downstairs to be released, whether she wanted copies of the photographs to be e-mailed to her, and she declined.

During the call, Sellers asked Respondent Vecchio if he remembered her, and that he had arrested her for a traffic violation. Sellers told Respondent Vecchio that her case had been dismissed, that she "was really concerned" about the photographs he took, especially the one of her breast, and asked "if there is any way I could have them back." Respondent Vecchio told Sellers that "if the case was dismissed, then the pictures were destroyed."

Sellers admitted that before IAB was contacted, she spoke with Klein about bringing a civil action against the City and Respondent Vecchio. She denied discussing the amount of damages she could get from the City, but admitted that she knew the specific monetary demand made in her pending lawsuit.

Sellers testified that Respondent Holbert was professional and "nice" toward her. She recalled, however, that at one point, when Respondent Holbert was working on his computer, he asked Sellers for her e-mail address. She felt this was inappropriate and did not answer him. Sellers did not "know if you would call it joking." She admitted, however, that she told IAB in May 2004 that Respondent Holbert's comment "was just said as a joke."

Sellers admitted that in May 2004, when the complaint to IAB was first made, she did not remember Respondent Holbert's name. She had referred to him in interviews as "the tall Spanish gentleman." Eventually, she "was informed" of his name, possibly by her attorney.

Police Officer Cynthia Mazzuki

Mazzuki, the property officer at the 123 Precinct, was formerly assigned to patrol. On October 22, 2003, at approximately 9:50 a.m., Mazzuki and her partner, Police Officer Nichol, responded to a residence on Staten Island. They observed that Emergency Medical Service personnel were present with a young woman, S.L. The windows in the house were open, as S.L.



had tried to commit suicide by placing her head in the oven. Mazzuki had difficulty communicating with S.L., and she was "[c]lose to incoherent." She believed S.L. was intoxicated or under the influence of a controlled substance.

While in the ambulance, S.L. stated that she had been raped. The ambulance transported S.L. to Staten Island University Hospital (SIUH) South. Mazzuki returned to the 123 Precinct and retrieved a Polaroid camera from the desk in order to photograph S.L.'s injuries.

Mazzuki went to SIUH South and observed S.L. in the emergency room (ER). S.L. was wearing a pajama top at the time and her hair was down. While S.L. displayed her injuries, Mazzuki took photographs.

Mazzuki testified that the Respondents were notified to respond to the hospital to investigate the rape complaint. Mazzuki gave the photographs she took to Respondent Holbert. Mazzuki stated that the Respondents were present while Mazzuki took the photographs but were "[j]ust standing there." The Respondents did not take any photographs of S.L. Mazzuki did not recall if either Respondent had a Polaroid camera "in his hands," but it was possible that one of them did have a camera.

Mazzuki stated that S.L. was being "inappropriate" in the presence of the Respondents. She was trying to remove her clothes, and Mazzuki had to tell her to stop several times. S.L. did not actually expose herself.

Mazzuki identified DX 8-14 as the photographs she took. Mazzuki asserted that the hands and the pajamas worn by S.L. made her remember taking these particular pictures. Mazzuki admitted telling IAB on June 11, 2004, that she took "approximately four" photographs. Mazzuki stated that she did not take any other photographs of S.L.

In DX 8-14, S.L. was wearing at least a pajama top, and displayed various injuries. Her hair is down and she was not wearing makeup.

After about one hour, Mazzuki went with S.L. to SIUH North for the Vitullo kit to be taken. The Respondents did not go with Mazzuki and S.L. to SIUH North, but they arrived later. Mazzuki did not remember if either had a camera "in their hand" at SIUH North.

Mazzuki did not recall if S.L. ever changed into a hospital gown, or if S.L. altered her hair style at any point that day.

Mazzuki would leave S.L.'s room when a doctor or nurse came in, but did not know if the doctor or nurse, or both, remained with S.L. Mazzuki recalled that at the hospitals, a female nurse was present with the doctor that was treating S.L., but they were both "in and out."

Deputy Inspector Terence Moore

In May 2004, Moore was the commanding officer of IAB Group 33. Moore believed that on May 12, 2004, a call was made to IAB by Klein regarding the photographing of a nipple piercing by "Detective Vecchio, and later on to be Detective Holbert." Klein also alleged that an unidentified officer, later identified as Respondent Holbert, asked Sellers if she wanted copies of the nipple photograph e-mailed to her.

Moore testified that on May 18, 2004, after interviews were performed with Sellers, a controlled telephone call was made between Sellers and Respondent Vecchio. As a result of the call, Moore went to the 123 Detective Squad with, he believed, Lieutenant Chapman.

At the precinct, Moore spoke to the 123 Squad's commanding officer, Sergeant Quirk. Moore identified himself and directed Respondent Vecchio to hand over the photograph of the

nipple piercing. Respondent Vecchio "opened a small mailbox type of locker, combination," and removed a picture of a nipple piercing (DX-1).

Moore also "requested" Respondent Vecchio to give him "the additional photos," as Sellers had alleged that several pictures were taken. Respondent Vecchio did not "[i]mmediately" give the additional pictures to Moore. Moore had directed him to re-open the locker, but Respondent Vecchio was "not compliant."

Moore testified that Detective Jeff Ward, a trustee for the Detectives' Endowment Association (DEA), and Detective Scotto, a DEA delegate, arrived at the 123 Precinct after Respondent Vecchio gave Moore the Sellers photograph. Moore saw Ward and Scotto making a phone call. Moore was then informed by one of these detectives that, after consulting with counsel, Respondent Vecchio was not going to re-open the locker. Respondent Vecchio was in earshot of this conversation, and at one point, Moore again told him, "I want you to open that locker."

Moore called Lieutenant Romanzi, who arrived with bolt cutters, and they cut the box's lock. Additional photographs were removed from the locker.

The lockers in question were Department property but for the use of detectives. They were used to secure weapons and receive mail.

Moore testified that for a "keeper," an arrestee that was "going to end up going through the system," Central Booking would take the arrest photograph. For someone given a desk appearance ticket, usually one photograph of the face is taken by the arresting officer.

Moore was not aware of any "specific written" Department prohibition on taking photographs of an arrestee's scars, marking, tattoos or piercings. Nor, Moore stated, did the On Line Booking System Arrest Worksheet (OLBS) require such photographs. Moore explained

that the OLBS is filled out by hand, and the information is then typed into the computer. He did not believe that the computer would allow an officer to type in detailed information about, for example, ten different tattoos and their locations.

Moore agreed that IAB had questions about the credibility of S.L. He was sure that a background check was performed on her. After his recollection was refreshed, Moore testified that there was an open bench warrant on S.L. for marijuana possession. The warrant was issued in Brooklyn in 1997. Moore agreed that while “[g]enerally,” it was the responsibility of a member of the service to bring a person listed on an active warrant before a judge, he “could have made the decision based on it is a low-level marijuana warrant.” Moore was certain that the District Attorney’s office was consulted.<sup>3</sup>

Moore conducted an Official Department Interview of Respondent Holbert on December 14, 2004 (see DX-39, tape; DX-39a, tr. as aid to Ct.). Chapman and Lieutenant Maldonado were also present.

Moore stated that interviews were conducted with other female complainants and defendants where Respondent Holbert was involved. They characterized him as “very professional, and nothing of any inappropriate nature.”

#### Captain Philip Romanzi

On May 18, 2004, Romanzi was a lieutenant, and a team leader in IAB Group 33. That day, as part of an ongoing investigation, Romanzi was in an unmarked vehicle in the area of the 123 Precinct, awaiting Moore’s instructions. A controlled phone call was taking place between Respondent Vecchio and a young woman, the complainant in the investigation. Depending on

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<sup>3</sup> The Advocate agreed with Respondent Vecchio’s counsel that no worksheet in the IAB file memorialized such a conversation with the District Attorney’s office.

the results of the call, IAB was going to enter the 123 Detective Squad room and search for evidence. Romanzi had bolt cutters in case they had to clip a lock.

Romanzi testified that he received a phone call from Moore, who instructed him to come to the 123 Squad with the bolt cutters, and Romanzi did so. When Romanzi arrived, Moore, who was accompanied by other IAB investigators, told Romanzi that he had obtained a photograph from Respondent Vecchio. Moore wanted Romanzi to open "the mailbox in the squad room" to search for additional photographs, as Moore had "made some statement to Detective Vecchio to the effect 'Give me the photograph, or is there more?'"

Romanzi testified Moore told him, referring to Scotto and Ward, "See if they will open the locker up."

Romanzi testified that he made "some statements . . . for everyone to hear," but Romanzi and Moore "were not in communication" with Respondent Vecchio. Romanzi was told by Scotto that on the advice of counsel, "they would not open the locker consensually. Romanzi then "tried to open it . . . . When I was unsuccessful, I cut the lock."

Romanzi characterized the lockers in question as "[c]ubbyholes or cubbyhole mailboxes." They were somewhat smaller than bowling-ball size. The door to the mailbox could be locked with a padlock, and they are located in banks of several other mailboxes.

Romanzi searched the locker at Moore's request. Inside, Romanzi found a "partial bottle" of Southern Comfort liquor (DX-35, photograph of bottle). He believed it was a 200-milliliter bottle.

Romanzi also recovered various photographs from Respondent Vecchio's locker. The photographs were differently sized and in a stack. On direct examination, Romanzi testified that the photographs were not tied together, but on cross-examination, he admitted that he had no

recollection whether they were in an envelope or clipped together. He did not memorialize in any document "whether they were in a Police Department envelope, a white envelope, paper clip, stapled or anything of the such."

One set of photographs Romanzi recovered were DX 2-6, which were the pictures of Sellers other than the nipple photograph (DX-1). Romanzi also received the nipple photograph from Moore.

Romanzi recovered fifteen other Polaroid photographs (DX 15-29). These were of a woman named S.L., whom Romanzi determined "was not the complainant in the case we were investigating." Romanzi "then had an idea who it may have been," so he "went through Detective Vecchio's desk," and "found a portion of a case folder" on a rape case that had been handled by the 123 Squad prior to IAB's involvement. Romanzi surmised that it was S.L., the complaining witness in the rape case, and later confirmed this by speaking to her.

These photographs displayed S.L. sitting or lying in a hospital bed, and in various states of nudity. She was wearing makeup and her hair was braided in long pigtails.

DX-15 showed S.L. pointing to a bruise on her left thigh; her breasts were exposed. DX-16 showed the rear of S.L.'s right shoulder blade area. DX-17 displays S.L. lying somewhat sideways. She is laughing and cupping her breasts with her hands. There is a bandage wrapped around the area below her left knee. DX-18 is a similar pose, but S.L. is sticking her tongue out at the camera and touching the tip of her tongue to her top lip. In DX-19, S.L. is smiling and completely nude. The left thigh bruise is seen, along with a navel piercing and a tattoo of a Lexus symbol below the navel.

In DX-20, S.L. is again naked, and is holding her right arm so as to display a bruise. DX-21 again shows S.L.'s breasts, but a hospital gown is partially wrapped around her waist. She is

displaying the tops of her hands; several press-on nails are visible. DX-22 displays S.L.'s naked genital area, with her legs spread. The Lexus tattoo and a clitoral or clitoral-hood piercing are visible. DX-23 shows S.L. again mostly nude, displaying the top of the right thigh. DX-24 is a close-up of S.L.'s genitals, but she is covering them with her hand.

DX-25 shows S.L.'s back, with a written tattoo of her first and middle names at the small of the back. In DX-26, S.L. is pointing to her right bicep. In DX-27, S.L.'s breasts are displayed, and she is posing her head so as to emphasize the left side of her neck. DX-28 is a photograph of the back tattoo, with S.L.'s buttocks fully exposed. In DX-29, S.L. is smiling and in a naked sphinx-like pose, supporting herself on her elbows and knees.

A third set of photographs Romanzi recovered were four 4x6 non-Polaroid shots of S.L. (DX-38). S.L. is posing near a pool, and her breasts are exposed. A right nipple ring is also present.

Romanzi also searched the Respondents' desks. He recovered a set of playing cards from Respondent Vecchio's desk (DX-36). The backs of the cards display a series of very obese women in various states of undress. Also in the desk was a partial copy (the front and back pages are missing) of the March 1994 issue of Gallery, a magazine featuring nude women (DX-37).

Romanzi testified that S.L. had twice tried to commit suicide on the night she was admitted to SIUH, after having made a rape allegation. She was given a psychiatric evaluation and involuntarily committed to the psychiatric ward of SIUH, and that she was on suicide watch for at least part of her stay.

Romanzi testified that during his investigation, he discovered that SIUH, "as a matter of policy," did not "document visits by law enforcement personnel to its patients."

Lieutenant Natalie Maldonado

Maldonado, of IAB Group 33, was the assigned investigator on the Respondents' case. She received a telephone call from Klein, who wanted to set up an interview for IAB to interview Sellers. Maldonado was present for the meeting, which occurred at the Brooklyn / Staten Island IAB office. Sellers, Klein, and Straffacio were also present.

Maldonado testified that she received Respondent Vecchio's case folder on the Sellers arrest. Inside the folder was paperwork, including the complaint report, and two Polaroid mugshot photographs of Sellers's face. She was clothed in the photographs.

Maldonado also met with S.L. at the office of her lawyer, Jason Leventhal.<sup>4</sup> Moore and Chapman were also present. Maldonado met or spoke with S.L. approximately twice. She did not recall that S.L. ever appeared intoxicated or "out of it," but someone else was doing the questioning of S.L.

Maldonado reviewed "the particular case file" in which S.L. was a complaining witness. The file contained paperwork, including the complaint report, and about seven Polaroid pictures of S.L. taken at the hospital (DX 8-14). The photographs appeared to show bruises and broken fingernails. The file also contained "an envelope with fingernail clippings or something, broken fingernails."

Both of the case folders, Maldonado testified, were "not an accordion file that closes, but an open file."

A worksheet prepared by Maldonado was admitted as Respondent's Exhibit (RX) C. It concerned Maldonado's conversation with Joanne Janovsky, a hospital patient representative.

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<sup>4</sup> Leventhal was associated in a law practice with Klein (see RX-B, IAB Call Out Log, displaying business card of Leventhal & Klein, LLP).



Maldonado believed the conversation was over the phone, but she did not “really recall 100 percent.”

RX-C was a synopsis of Maldonado’s conversation with Janovsky. It states that Janovsky told Maldonado that because S.L. was on suicide watch, a “sitter” would have remained with her “and would not have left [S.L.] alone in her room under any circumstances, without relief or permission from the ‘sitter’s’ supervisor.” The Respondents, Janovsky said, would not have had the authority to remove the sitter. The presence of the sitters, who were generally nurse’s aides, would not have been noted on patient records.

Maldonado said that she had no recollection of interviewing Janovsky. On re-direct examination, however, Maldonado claimed that she did not ask Janovsky “whether, in fact, a sitter stayed with [S.L.] the entire time she was in the hospital.” Maldonado asserted that she would have written this information down, but admitted that she did not write on the worksheet every single question she asked Janovsky.

Maldonado knew that the rape complaint made by S.L. was dismissed and not prosecuted. Maldonado learned that S.L. had “a psychiatric and drug history.”

Maldonado arrested Respondent Vecchio on November 19, 2004. The arrest was processed as a DAT. Maldonado filled out the OLBS for the arrest, and believed she asked Respondent Vecchio if he had special markings, piercings or tattoos. Maldonado did not take any photographs of these characteristics. She indicated that such photographs would only be required for a gang-related incident or an incident with a similar modus operandi. Maldonado admitted on cross-examination, however, that she did not take the “arresting photos” of Respondent Vecchio, and that this task was performed by a different officer. She did not authorize anyone else to take photographs of Respondent Vecchio other than the mugshots.

Sergeant James Fox

Fox was assigned to IAB Group 33. He took over the investigation of the Respondents' case from Maldonado.

Fox subpoenaed S.L.'s medical records from SIUH to ascertain the names of nurses or patient care assistants that treated her. IAB wanted to interview the sitters to determine if they were present while Department officers "came to the hospital" to investigate S.L.'s case, including whether photographs were taken.

Fox obtained S.L.'s medical records, but did not find any of the names. After conferring with an assistant district attorney, Fox subpoenaed additional SIUH records. IAB told SIUH the dates S.L. was there, and requested that the hospital review their records in order to determine which personnel may have been present with S.L.

SIUH gave the investigators the names of four patient care assistants (PCA), three of whom still worked at the hospital, as the sitters most likely to have been with S.L. Fox interviewed each of the remaining three PCAs, but the fourth could not be located.

The first PCA, Dorothy Fox, and the third PCA, Genivieve Griffiths, did not remember S.L., or any time that police had visited a patient they sat with.

The second PCA, Jennifer White, remembered being a sitter for S.L., mainly due to S.L.'s unusual name and a familial connection to the singer David Bowie. White told Sergeant Fox that there was no "police involvement" while she sat with S.L. White added that PCAs were not supposed to leave the room unless relieved or if the patient left the room, even if the PCA was ordered to do so by a police officer. White "made it seem like it was a strict hospital regulation."

Fox stated that he had heard from other IAB personnel that there were "suspicions" about S.L.'s credibility.

A grand jury subpoena was admitted as RX-EE. The subpoena indicates that the defendant in S.L.'s case was Damon Jacobs, under Docket Number 2003RI008588. The assigned ADA was Keri Caden.

Sergeant Grace-Marie O'Connell

O'Connell was assigned to the Special Victims Liaison Unit. Part of her responsibility was to train Special Victims personnel. She was previously a supervisor in the Brooklyn Special Victims Squad.

O'Connell contended that neither she nor any detectives she supervised had taken photographs of sex crime victims. O'Connell asserted that in a sex crimes case, any evidentiary photographs of the genitals of a victim should be taken by hospital personnel. O'Connell said that there were physicians, nurses, nurse practitioners and physician's assistants specially trained in evidence collection, including both internal and external photography.

O'Connell admitted that no Patrol Guide section or Operations Order directed or prohibited the photographing of a complaining witness in a rape case. Domestic Violence units were permitted to and did take Polaroid photographs of bruising or black eyes or "extremities, something out visible." O'Connell did not "feel it would be inappropriate" as long as the injury was "on a body part that is not considered a private part or something that would be exposed in public."

O'Connell stated that she would not have allowed her investigators to take any of the photographs in DX 15-29. In some of the pictures, O'Connell said, the subject or patient

appeared to be pointing out a bruise, but O'Connell did not "see why this picture would be necessary to show that."

O'Connell testified that an Operations Order (DX-41) was issued in January 1999 and incorporated into the Patrol Guide in, she believed, 2005. DX-41 stated that the purpose of the Operations Order was to ensure that sexual offense evidence would be properly forwarded to the Office of the Chief Medical Examiner. The Order defines "sexual offense evidence" as, besides the Vitullo kit, "bloodstains, serology, body fluids and/or other biological evidence (e.g., clothing, bedding, undergarments, etc.) to be analyzed for the purpose of obtaining a DNA profile." A note in the Order adds, "There is no medical or legal reason for a uniformed member of the service, male or female, to be present in the examining room during the medical examination or evidence collection procedure."

#### Hearsay Statements of S.L.

The Department introduced the transcripts of several proceedings in which S.L. made statements about the October 2003 matter.

#### TELEPHONE INTERVIEW

A telephone interview of S.L. conducted by Romanzi on May 19, 2004, was introduced as DX-32. S.L. identified Respondent Vecchio as the detective who handled her case. She did not remember his partner, a male, but the name Holbert would "[p]erhaps" "ring a bell." S.L. believed that these detectives visited her twice, at "the first hospital." On the first visit, they interviewed her and photographed "the bruises of my body, my whole body." S.L. stated that this was the only time photographs were taken.

S.L. did not believe the detectives at the second visit were the same as at the first. When asked if these detectives were Vecchio and his partner, the transcript gives S.L.'s answer as "(inaudible) think so." S.L. was asked if these detectives were professional, and if they did anything inappropriate or were "suggestive in any way." She answered, "Well maybe they stopped by my house a couple of times just to have coffee and talk to me."

Romanzi described to S.L. photographs (DX 8-14) in which her hair was straight, and depicting injuries. She stated that these were the photographs the detectives took.

When Romanzi asked S.L. if she recalled additional photographs (DX 15-29), in which her hair was braided and which he did not think "were taken at the same time," she replied, "I don't, I don't know maybe."

S.L. then told Romanzi, "He took two sets of photos." The first set was when she "was entered into the hospital. . . . And then he came back and he took more when I had already been there for three days because they said the bruises would look darker." S.L. said "they had asked me to take all my clothes off and to spread my legs and take photos so that they could show the bruises on my thighs and stuff." The detectives "made me feel like very comfortable about it. That it was a normal procedure I didn't think that they were trying to take advantage of me, I didn't think." The detectives "made sense what they were saying it didn't seem like you know." S.L. mentioned that she was on a lot of medication at the time, including the painkiller Percocet.

Romanzi explained to S.L. that "it appears that they're not the type of photographs that detectives would be taking of a crime victim in that there's a certain amount of I don't know playfulness . . . that I can kind of see." When Romanzi asked S.L., "I mean did they like kind of coax you into taking them or make you laugh or tell you anything?," she said, "No, well they

were definitely very humorous yeah and we were laughing.” None of the remarks, however, were “colorful.”

First, S.L. stated that the detectives did not mention specifically that they needed to photograph tattoos or piercings. Subsequently, S.L. stated, “Maybe yeah,” in response to Romanzi’s question of whether any investigators asked her about piercings or tattoos, including possibly those of her genital area. She did not believe, as Romanzi asked, that “either of the detectives that you dealt with” indicated they had piercings.

S.L. stated that it was somewhat difficult to get in touch with Respondent Vecchio, “and I tried like he called me back when he could.”

Romanzi described to S.L. a series of photographs (DX-38) that appeared to be professionally taken, “of a very attractive young lady, partially nude.” S.L. said these could be pictures of her, and that while she had a photo album, she did not know where detectives could have gotten them.

#### LIVE INTERVIEW

An in-person interview of S.L. conducted by Moore on June 17, 2004, was introduced as DX-33. Chapman and Sergeant Marvelle were also present. The interview took place at the office of Klein, who was representing S.L. The voice of an unidentified male was noted during the interview by the transcriptionist, and from the context of his statements, the male may have been Klein.

S.L. stated that when she was first brought to the hospital, photographs were taken. S.L. said that the photographs were for “a lot of lacerations and bruises and stuff.”

S.L. believed that the Respondents took all the photographs that were taken of her. Moore showed S.L. seven photographs, which S.L. identified as the "second set" of photographs. However, S.L. did not recall which officers were present at the hospital that night, explaining that she had been "a little distraught," and had been using alcohol or drugs. She indicated that some of the officers were in uniform and others were not.

On the second or third day of her hospital stay, S.L. asserted that the Respondents came back to take more Polaroid photographs of her. She knew it was the Respondents because they identified themselves to her, and subsequently visited her home on several occasions. On this visit, the detectives took nude photographs of her.

S.L. stated that she was on suicide watch, and a nurse was in the room with her, but the detectives asked her to leave. She described the nurse as "Mulatto" in appearance and possibly heavy-set. S.L. said that she was in a private room with no other patients.

S.L. asserted that the detectives asked her to take her clothes off, and spread her legs in some of the photographs to show the bruises on the inside of her legs. They also tried to position her in different states "I guess so that they could see different patterns of bruising."

S.L. was shown several photographs from DX 15-29. She did not remember them, explaining that she was on Percocet at the time "and a little bit out of it." She explained that she was smiling in some of the photographs because the detectives "were kind of humorous and flirtatious and they were making me laugh."

S.L. stated that the Respondents did not return to the hospital to visit her after taking the photographs, but they did visit her home on several occasions, both together and separately. On the first day, S.L. believed she asked them if she could get a certain comforter back from evidence. She asserted that Respondent Holbert told her "something to the effect of there was a

rag in evidence that I wouldn't use when I was finished with them." S.L. realized that he was referring to a kitchen towel that she had used to clean up a spill near her bed, but Respondent Holbert "was referring to it as a come rag." She "was kind of just like appalled" and "not so nice perhaps as I had been."

Another visit to S.L.'s home was at her request because she had found more evidence, some bloodied and broken fingernails.

Moore showed S.L. two photo arrays. In the first, she could not identify anyone, and in the second, she said that array member #3 looked like Respondent Vecchio but she was not sure.

S.L. mentioned that Respondent Vecchio told her that he had a tongue ring. She believed he also told her that his penis was pierced, or had been at one time. S.L. believed these conversations were in the context of discussing her piercings.

S.L. stated that the professionally-produced pictures (DX-38) were taken during a photo shoot in California.

#### 50-H HEARING

On November 18, 2004, S.L. was questioned by an attorney for the City pursuant to General Municipal Law § 50-h regarding the civil action she had filed. The transcript was admitted as DX-34.

Originally, S.L. stated that she did not know when police officers first came to her home. After a break held due to physical pain S.L. was experiencing, she stated that she was mistaken, and knew that the Respondents had been to her house while she was at the hospital because they told her that "they had found my vibrator and put it back in the spot where they had found it."



S.L. was almost certain that she first encountered the Respondents on the first night she went to the hospital.

S.L. stated that at the hospital, the Respondents told her that they needed to take photographs of her bruises. She was in a room by herself, and the Respondents told the nurse to leave. They told S.L. to undress, and put her in "various precarious positions," but did not touch her. They were in her room for 30 to 45 minutes, and took photographs of her. The detectives had "the nurse on duty outside the door so nobody could walk in."

#### FIRST CRIMINAL TRIAL

S.L.'s testimony in the first criminal trial of Respondent Vecchio, on November 15, 2005, was admitted as DX-31.

S.L. testified that the Respondents were assigned to her rape case, and visited her at SIUH one time. "He told me that he had to take pictures of me now that bruises had set because they had arrested Damien Jacobs [sic] that day and they wanted to get more evidence." She was taking Percocet at the time. S.L. said that she had a sitter, who was supposed to stay with her the entire time, but left when Respondent Vecchio ordered her to leave.

S.L. testified that Respondent Vecchio told her to disrobe. She replied that she couldn't because she was not wearing a bra or underwear. Respondent Vecchio "insist[ed]" and told her it did not matter. He said he needed to take nude pictures because there were imprints of fingers on the inside of her thighs, and numerous lacerations on her body.

S.L. asserted that Respondent Vecchio told her how to pose for each photograph, and to "splay her legs" for some of the photographs to capture bruises. In another picture, he told her to get on all fours, as there were lacerations on her back.

S.L. doubted that Respondent Vecchio asked her if she had any piercings because “they were probably very visible at that point.” She said she was smiling in some of the photographs because he told her to, “joking around in a couple of the shots and the rest of them were probably” as a result of Respondent Holbert “making small talk with me. He was trying to be kind of I guess funnier or flirtatious.” Respondent Vecchio “was quite a friendly kind . . . of jovial mood,” and both detectives were “joking around.”

S.L. stated that she asked for two of the photographs back because they “didn’t look like they should be held by anybody but me.” Respondent Vecchio told her she could not have them at that time because she was being transferred to “the sanitarium” for a 72-hour suicide watch “and that they might search me, I could get in trouble.” He said he would give them to her at her house. S.L. believed he said “he would hold them, not put them in a file and give them to me.”

#### SECOND CRIMINAL TRIAL

S.L.’s testimony in the second criminal trial of Respondent Vecchio, on January 23, 2007, was admitted as DX-30.

S.L. stated that when she was first taken to the hospital, a police officer took photographs, but she did not remember who it was. That evening, she was taken to SIUH North and placed in a private room. There, she was on 24-hour suicide watch and had a nurse at her side constantly.

S.L. stated that the Respondents arrived at her room at SIUH North. The nurse was there, and S.L. recalled her as a light-skinned black woman with braided hair. She did not have an accent. The Respondents asked the nurse to leave, which she did. She sat right outside the door to the room, but the door was shut. S.L. described her room as a private room, with no curtain.

S.L. testified that the Respondents told her that they had arrested Damon Jacobs that day. They said they needed to take more photographs "now that the bruises had set in because they really wanted to get this guy." Respondent Vecchio had a Polaroid camera.

S.L. was wearing pajamas at the time. She testified that Respondent Vecchio told her to disrobe. She replied that she couldn't because she was not wearing a bra or underwear. Respondent Vecchio told her that she had to because he needed to photograph the bruises on the inside of her thigh. S.L., "even though I was a little unsure about it, I figured since he was a detective and a cop that it was okay, and I took my clothes off." She asserted that Respondent Vecchio "told me which positions to show my bruises supposedly." In one, he told her "to get on all fours to show the bruises on my back and thigh," and in another one, to spread her legs.

S.L. asserted that Respondent Holbert "was right there next to" Respondent Vecchio while S.L. was photographed. She was smiling in some of the photographs because the Respondents were "very cordial and friendly up until Detective Holbert started making off-color remarks."

S.L. testified that Respondent Vecchio showed her the photographs after he took them. She wanted two of them back in particular, because "they had nothing to do with what they were supposed to be doing." Respondent Vecchio told S.L. that he would hold onto all the photographs and give them back later, "because when I went into the psychiatric ward they would search me, if I had them on me they would take them from me and I would be in trouble."

S.L. stated that the Respondents talked to her for a while as the photographs dried, then left. The nurse then returned to the room.

S.L. described DX 15-29 as the "second set of pictures that the detectives took in the hospital." On voir dire pursuant to the People's motion to admit the photographs in evidence,

she said that they were taken between four and six days after October 22, 2003, "the very day that Damon was arrested, I remember the detectives telling me that."

S.L. stated that the Respondents visited her in the hospital at most twice, and that no other law enforcement official visited her there after the date she referenced as Jacobs's arrest. She identified the signature on the photo array containing Jacobs (see RX-Z, p. 35, *infra*) as her signature, and stated that it was shown to her on October 28, 2003, by the Respondents. She explained that she had "forgot about this" and "[a]pparently" the Respondents visited her three times, not two. She stated that it was not possible that the photographs were taken on October 28, 2003. On that date, she was in the "main building" in a private room. She did not recall if "Detective Holbert c[a]me by himself" or "with Detective Vecchio." She agreed that she was on a heavy dose of Percocet while at SIUH, but insisted she "was always coherent."

S.L. testified that she hired Klein, or at least spoke to him about taking the case, the day before she told Romanzi in an additional conversation (apparently not the phone interview admitted as DX-32) that Respondent Holbert inappropriately touched or tried to touch her.

#### Official Department Interviews of Respondent Holbert

Two interviews of Respondent Holbert, dated December 14, 2004, and June 21, 2005, were admitted as DX-39 and DX-40, respectively (the transcripts of each interview, introduced as an aid to the Court, were respectively marked as DX-39a and DX-40a). Respondent Holbert's account in the interviews was essentially the same as his testimony at trial.

Respondent Vecchio's Case

Respondent Vecchio called Detective James Masiello and Chester Dabzitzki as witnesses, and testified on his own behalf. Respondent Vecchio also introduced several SIUH documents, including S.L.'s medical records and the hospital suicide procedures manual.

Detective James Masiello

Masiello was assigned to the Staten Island District Attorney's Office Squad. He was approached by a confidential informant (CI), with whom he had worked two to three times and found reliable. The CI told Masiello that he knew S.L. from a bar where she was a "dancer." The CI said that S.L. was not raped, but had been engaged in an act of prostitution, "wanted more money from the guy she had sex with and he wasn't going to pay her." The name given by the CI was slightly different phonetically than S.L.'s actual name.

The CI also told Masiello that S.L. was involved in the drug trade, "more like a mule that was bringing pills back to New York." The individuals running the drug operation were going to put S.L. and another woman on a flight to California. The circumstances under which the CI came to give Masiello this information was that "he was giving up that she was taking drugs, and she was going to transport drugs back to us, and that's when this happened; he informed me that that is the girl."

Masiello was not assigned to the Jacobs case, but relayed the CI's information to the assistant district attorney that was prosecuting Jacobs.

RX-AA was admitted into evidence. It is an Action Sheet from the Staten Island DA's Office for defendant Damon Jacobs and appears to memorialize an ADA's notes and actions taken during preparation of the case.

Chester Dabzitzki

Dabzitzki was the Department's Director of Photographic Services. He was not aware of any "specific written policy or procedure," as of January 2004, prohibiting the taking of an arrest photograph of a defendants' tattoo, mark, scar or piercing. As of 2004, such characteristics "that are normally visible in street attire" could be photographed.

Dabzitzki testified that as of 2003 or 2004, there was a policy on the photographing of "sensitive" or "private" areas. The arresting officer was supposed to "make a request for such a photo," and the request was supposed to be approved by "a supervisor on site." The Photographic Unit would then take the picture. A member of the same sex as the prisoner should be present for the photograph. Nude photographs were "to be taken with as much privacy and delicacy as possible."

Medical Documents From Staten Island University Hospital

RX-FF is the SIUH Patient Care Manual regarding "Suicidal Patients." It states that "[a]n observer will be assigned on a one to one basis . . . . The observer is to remain arms distance from the patient at all times. The patient is never to be left alone."

RX-E is a report from a psychiatric consultation performed on S.L. dated October 22, 2003. S.L. "reports a long history of 'committed suicide on so many occasions.'" She also stated that she was raped at her residence "by 'a bouncer at a café.'" S.L. reported using various drugs, including ketamine and PCP. Her thoughts were described as sarcastic and illogical, and her judgment and insight as limited. She also reported "homicidal ideation." S.L. was admitted to the hospital "on one-to-one (female only)."

RX-F is a document stating that S.L. reported trying to kill herself "because she has no money."

Progress notes from October 22, 2003, state that S.L. displayed abnormal behavior, including delirium (RX-I).

RX-J constitutes progress notes from October 22 and 23, 2003. The notes mention the one-on-one sitter. Additionally, S.L. refused over-the-counter pain medication, and instead wanted Percocet. She wanted to see a physician, and made "bizarre comments," like saying that the doctor was on the roof "smoking a joint." S.L. also wanted "a joint then she would need pain medication."

RX-M are progress notes from October 24, 2003. The notes mention S.L.'s altered mental status, and add that she pulled out her IV line, stating that she needed a new one. There was no suicidal ideation, but the sitter was continued.

Progress notes from October 27, 2003 (RX-V), state that S.L.'s insight and judgment were limited, and that she should be admitted to IPP, SIUH's psychiatric unit, when a bed became available. The one-on-one sitter was continued.

RX-W, dated October 28, 2003, states that S.L. was being discharged to IPP, and that the sitter was continued.

RX-X was the IPP admission assessment. S.L. denied alcohol or drug use, and also denied "family history."

RX-Y was S.L.'s discharge summary. S.L. was diagnosed with polysubstance abuse and mixed personality disorder. She denied a history of substance abuse, but tests came back positive for cocaine, benzodiazepines and barbiturates.

Photo Array

A photocopy of the computer-generated photo array used by S.L. to identify the assailant in the rape case was admitted as RX-Z. The original photo array was admitted during Respondent Vecchio's criminal case. On the array, S.L. made an identification and initialed the sheet at the bottom. It is dated October 28, 2003.

Respondent Vecchio

Respondent Vecchio testified that he became a Police Officer almost nineteen years ago. He was promoted to Detective Third Grade in October 2003, and was previously assigned to the 123 Squad. He and his wife had been married for 29 years, and had five children, three of whom were adopted through foster care.

On October 22, 2003, the Respondents went to the ER of SIUH South in response to an allegation of rape. Respondent Vecchio was the assigned detective and lead investigator on the case. The detectives were directed to S.L., who was "inside a cubicle, for lack of a better word." Mazzuki was present, along with doctors and nurses. Respondent Vecchio had a Polaroid camera because that "is usually what you do when you are responding to a job."

S.L. appeared to be under the influence of a controlled substance. Respondent Vecchio spoke to her, but "she wasn't very coherent." He found out "what had happened," and S.L. mentioned that she had some bruising as a result of the incident. Respondent Vecchio took some photographs of the bruises, and he believed Mazzuki did also. He did not recall Mazzuki having a separate camera.

Respondent Vecchio asserted that Mazzuki was incorrect in her statement that she took all of the pictures in DX 8-14. He believed he took DX-8, DX-14, and possibly DX-9. He may



have taken more than three or four photographs. He testified that he took photographs of S.L. because it was his case, but he did not know why Mazzuki took them. Respondent Vecchio contended that these were the only photographs he took of S.L.

Respondent Vecchio testified that S.L. began taking her hospital gown off. He and Respondent Holbert stepped out of the room. Respondent Vecchio believed Respondent Holbert may have said, "Whoa." At the time, S.L. was "adamant" that the nurse swab her mouth. Respondent Vecchio described S.L.'s demeanor as midway between flirtatious and an emotionally disturbed person. Mazzuki remained in the area, and Respondent Vecchio testified that this is when Mazzuki might have taken photographs.

Referring to DX 8-14, Respondent Vecchio asserted that S.L. was wearing a hospital gown, commenting, "They are pretty wild hospital gowns for Staten Island Hospital." Mazzuki was incorrect when she testified that S.L. was wearing pajamas. Respondent Vecchio testified that Mary Dalrimple, S.L.'s roommate, made a written statement in which Dalrimple said that at the time of the alleged rape, S.L. was wearing green pajamas.

Respondent Vecchio contacted Sergeant Manzi, his supervisor, and returned to the 123 Squad. He picked up Manzi and went to S.L.'s residence. Crime Scene Unit (CSU) personnel were present. Respondent Vecchio denied taking anything from the residence. The CSU report (RX-GG) indicated that CSU was present from 2:30 p.m. to 6:00 p.m. on October 22, 2003. Several items, such as bed linens, were taken as evidence. When the Respondents and Manzi left and returned to the 123 Precinct, CSU remained at S.L.'s residence.

The Respondents and Manzi then went to SIUH North to speak with S.L.'s treating physician. Hospital personnel were with S.L., and a female officer waited outside her room. The physician told Respondent Vecchio that a Vitullo kit was performed on S.L., but "evidence

of a rape wouldn't be conclusive due to evidence of too many prior partners in a short period of time."

On October 25, 2003, Respondent Vecchio arrested Damon Jacobs at the 123 Squad. Jacobs told Respondent Vecchio that he turned himself in after hearing about the allegation S.L. made against him. Jacobs said that they exchanged sex for money.

Respondent Vecchio testified that he relayed Jacobs's claims to Caden, the assistant district attorney, when he was at the Grand Jury.

Respondent Vecchio testified that he and Respondent Holbert went to see S.L. at SIUH North again, after October 25, 2003, possibly the 26th. He had been instructed by Manzi to follow up with her because the case had been selected for Compstat. He did not take a camera, as there was no need to take photographs of S.L. at that time. Respondent Holbert would be mistaken in his criminal trial testimony that Manzi told the detectives to return to SIUH for additional photographs.

Respondent Vecchio said that he and Respondent Holbert were escorted to S.L.'s room by a security guard, whom Respondent Vecchio described as "buffy." Upon arriving at S.L.'s room, a nurse informed Respondent Vecchio that S.L. was on suicide watch with a one-on-one sitter. Respondent Vecchio tried to speak to S.L., but she did not "seem coherent." He "wasn't getting anything useful out of her," and the Respondents left. Respondent Vecchio characterized S.L.'s appearance as similar to that in DX-14, the SIUH South ER picture.

Respondent Vecchio denied taking any photographs of S.L. that day. That was the last time he went to visit S.L. at the hospital.

Respondent Vecchio testified that weeks or months after this hospital visit, he was called to the Grand Jury on S.L.'s case, but S.L. did not appear. He spoke to Caden about the case, and

the prosecutor expressed doubts about S.L.'s credibility. Respondent Vecchio asserted that Caden asked him to find out why S.L. "was not coming to court."

Respondent Vecchio testified that he went directly from either the courthouse or the DA's Office to S.L.'s residence.

Respondent Vecchio asserted that S.L. was "[e]xtremely friendly" whenever he was in her presence. When he arrived, he said, S.L. "greeted me with her usual 'here is my sexy detective.'" S.L. had used this term in prior phone conversations. In terms of it being appropriate to go to S.L.'s residence unannounced and by himself, Respondent Vecchio "didn't really think anything of it."

Respondent Vecchio contended that S.L. told him she wanted to perform oral sex, and dropped to her knees. He told her that he was not interested. Respondent Vecchio asserted that S.L. then gave him a white envelope, saying, "[H]ere. This is possibly some more evidence for you." Respondent Vecchio said that at the time, he did not know what was in the envelope.

Respondent Vecchio testified that he returned to the 123 Squad. Eventually, he looked inside the envelope. In it were about fifteen Polaroid photographs of S.L. on a hospital bed, and four non-Polaroid photographs of her by a pool.

Respondent Vecchio identified DX 15-29 as the photographs given to him by S.L. He placed them in a yellow police envelope, the kind with black lines and holes on it, marked it with S.L.'s name, and put it in his locker (see RX-HH, photograph of cabinet of gun lockers).

Respondent Vecchio stated that he planned to give the photographs to Caden upon his next Grand Jury appearance. He was not, however, notified to either appear before the Grand Jury or to speak about S.L.'s case with any assistant district attorney. He admitted that it would have been a better practice to contact Caden as soon as S.L. gave him the pictures. In his view,

he was "still considered a rookie detective" and "new at this." Respondent Vecchio admitted, however, that he had been a police officer for approximately sixteen years. As a member of the 123 Squad, he made about ten arrests per month.

Respondent Vecchio asserted that he never removed the photographs in DX 15-29 from the locker or looked at them again. He did not know who took them. He did not make a notation of this evidence in the case file. "Thinking about it now," he maybe should have put the photographs in the case file, or informed a supervisor. He did not contact S.L. about the photographs to inquire who took them.

Sometime after Respondent Vecchio visited S.L. at her residence, she called him at the squad room. She said that she wanted the hospital photographs returned, as she had contacted a magazine that wanted to publish an article about the rape. He told S.L. that she could not have the photographs.

In January 2004, Respondent Vecchio believed, he was assigned a complaint regarding a suspect that had left the scene of an accident. The complaint report listed a license plate number, which yielded an address. On January 29, 2004, the Respondents went to that address. Respondent Vecchio saw that the car they were looking for was in the driveway.

Respondent Vecchio testified that Kristina Sellers answered the door, and the Respondents introduced themselves. Respondent Vecchio asked Sellers if she knew why they were there, and she said yes. Sellers told the Respondents that the vehicle's owner, her father was at work, and asked if they could wait until her father got home. The Respondents agreed. Sellers invited them in, and they waited perhaps ten minutes.

After Mr. Sellers arrived, Respondent Vecchio spoke to the complaining witness and arrested Kristina for leaving the scene of an accident. He handcuffed her in accordance with procedure, and they returned to the command. He did not search her upon arrest.

Respondent Vecchio said that he and Sellers had "[m]inimal" conversation on the way to the precinct, such as discussing whether she had been arrested before. She said she had not. At the precinct, Sellers mentioned that the name Vecchio sounded familiar, and that she had attended school with an Anna Vecchio.

At the precinct, Respondent Vecchio brought Kristina Sellers to the desk and a pedigree card was filled out. Mr. Sellers was present also; Respondent Vecchio believed he followed in his own car. The detective then took Kristina up to the squad, and her father was allowed to stay downstairs by the desk.

The supervising squad sergeant on duty was, Respondent Vecchio believed, Sergeant Quirk. Quirk and Detective Percia were out investigating a burglary. There was no sergeant present when Respondent Vecchio processed Sellers, but one was available by phone.

Respondent Vecchio ran Kristina Sellers for warrants. Because the charge was a misdemeanor, if she had no warrants, the arrest would be a DAT. His understanding was that it was his responsibility to take the arrest photographs in a DAT situation. He had made about ten DAT arrests in his career.

Respondent Vecchio testified that he asked Sellers about distinguishing marks, tattoos, piercings or scars. He noted these in the paperwork, then told her that he needed to take the photographs.

Respondent Vecchio took the photographs in DX 1-6. DX 2-6 were taken either in the cell (RX-JJ, photograph of 123 Squad's holding cell) or just outside. This was because the white

walls of the cell, the camera flash and the fluorescent lights combined to make some of the photographs not develop.

DX-1, the photograph of Sellers's nipple, was taken right in front, or just breaking the threshold, of a blue door that stands immediately upon entering the 123 Squad Room (see RX-II, photograph of door). The door, which leads to what is known as the lunchroom or lounge, was open at the time. He denied taking Sellers into the lounge and closing the door. Respondent Vecchio believed he took the nipple-piercing photograph last.

Respondent Holbert was present in the squad room when Respondent Vecchio took the photographs. Respondent Vecchio denied asking Respondent Holbert if he should take the nipple photograph. Respondent Vecchio did not contact a supervisor before taking the picture because "[i]t was listed on the form." The form did not state that he had to take the photographs, but "[i]t doesn't say I don't neither." He admitted that even though he was not sure of what he should have done in Sellers's case, he did not make an inquiry.

Respondent Vecchio's understanding was that taking such photographs was a common practice. He stated that he never before "had a situation where someone had a nipple piercing on an arrested defendant." He testified that he had seen pictures of tattoos in other folders, but "wouldn't know" if they were gang tattoos.

Respondent Vecchio believed he told Sellers that he was not sure whether he needed to take the nipple photograph, but she "had no objections." Sellers lifted her shirt, and he took the picture. Respondent Vecchio did not ask that a female Department member be present.

Respondent Vecchio testified that it took less than thirty seconds to take the nipple photograph. He denied making any comments of a sexual or lewd nature. He also denied asking Sellers about her rainbow tattoo and whether it indicated if "she had ever been with a woman."

Respondent Vecchio admitted that he might have mentioned to Sellers that he had a piercing; he "believe[d] it was a nipple." He believed this was a prior piercing. He did not "really recall" how this conversation began. He did not recall whether, at that time, he had a tongue piercing, but agreed that he must have mentioned it to Sellers because she testified about it.

Respondent Vecchio asserted that while his piercings were mentioned, no long conversation took place. He also testified that he had "[r]oughly" six tattoos. He contended that he had a "[s]light interest" in tattoos and piercings.

Respondent Vecchio stated that he took several photographs of Sellers because the film did not always produce usable images. Respondent Vecchio asserted that he put "[a] set of all the photos," including the tattoos and piercings, plus arrest paperwork, into an envelope. The envelope was part of the DAT package. He sealed the envelope and brought it downstairs to the desk so it could be sent to the Arrest Processing Office (similar to Central Booking in other boroughs). No one from the DA's Office called him about these photographs.

Respondent Vecchio admitted that he did not make a notation in the "case file" that he had taken photographs of Sellers's piercings or tattoos, or tell any individual that he had taken them.

Respondent Vecchio believed he stapled two mugshot photographs of Sellers to his case file. He also put extra photographs of Sellers into the card caddy, a metal box containing pictures of all individuals arrested and brought into the 123 Precinct.

Respondent Vecchio stated that he also placed another set of photographs of Sellers inside either the OLBS or UF-61, and put this in his gun locker. He did so because, "Unfortunately, in the 123, if you put everything in the folder and it gets moved, filed, someone

else looks at it, pictures tend to disappear.” Because he would have to go to court on Sellers’s case eventually, he did not want the photographs to get lost, which had happened before and is “kind of embarrassing in court.” He asserted that he had other complaint reports in the locker.

Respondent Vecchio admitted that he had the S.L. photographs in his locker when he put in the Sellers photographs. He denied looking at the Sellers photographs after January 29, 2004, and before May 18, 2004. He claimed that he never had a chance to place the Sellers tattoo and nipple photographs into the case folder.

Respondent Vecchio testified that he was working on May 18, 2004. The squad received a phone call, which was transferred to him. The person calling said hello and identified herself as Kristina Sellers. Respondent Vecchio believed he said, “Who?” Sellers stated that Respondent Vecchio had arrested her for leaving the scene of an accident. At that point, he “kind of remembered who she was.”

Sellers said that her case was dismissed, but she was concerned about the photographs, in particular the one of the nipple piercing, getting onto the Internet. Respondent Vecchio testified that he had not known Sellers’s case was dismissed. He told Sellers that if her case was dismissed, the DA’s case file would have been destroyed.

Sellers asked Respondent Vecchio if there were any other copies of the pictures, and he told her no. He admitted that he knew this was not true, but contended that he did not know where the other photographs were at that time. He also asserted that he felt no obligation to tell Sellers about the other photographs because as far as he knew, Sellers was a defendant on an active case.

After the phone call, Respondent Vecchio asserted, he looked for his folder. He wanted to “put the case together to have it complete.” He intended to inquire into the status of Seller’s



case upon his next visit to Criminal Court. He first looked in his desk, then his locker. Inside the locker, he found the Sellers photographs.

Respondent Vecchio testified that an individual, whom he later learned to be Lieutenant Chapman, entered the squad room and asked if he was Detective Vecchio. Respondent Vecchio said yes, but Chapman did not answer when Respondent Vecchio inquired of his identity. Respondent Vecchio closed the locker and stood up.

Moore then "came bursting into the squad room with a shield in his hand yelling 'Internal Affairs Captain; no one move.'" Respondent Vecchio's sergeant, Quirk, told Moore "he needed a little bit more than a shield." Moore and Quirk entered Quirk's office, where they spoke. Soon after, Respondent Vecchio was called into the office. Moore said that Respondent Vecchio had an inappropriate photograph of Sellers's pierced nipple, and if he gave Moore the photograph, "he wouldn't have to tear the squad room apart." Respondent Vecchio went to his locker, which had a combination lock, and gave the photograph to Moore.

Respondent Vecchio was then asked to wait outside. Scotto, his delegate, and Ward, the DEA trustee for Brooklyn and Staten Island, arrived. Respondent Vecchio had no further communication with Moore. "Anything further that was asked was directed to my union representation," and he "was pretty much pushed back." Respondent Vecchio did not tell Scotto or Ward what was in his locker.

Either Scotto or Ward spoke to legal counsel over the phone. Scotto and Ward told Moore that on the advice of counsel, they would not open the locker. Respondent Vecchio asserted that he would have opened the locker if "it were up to" him, but admitted that he did not interject during the "whole conversation back and forth" that he would open it. He believed that Romanzi arrived with bolt cutters, and Moore and Romanzi cut the lock.

Respondent Vecchio testified that he shared a desk in the 123 Squad with “[a]ny number of individuals.” Inside the desk were “large women playing cards,” a “gag gift” given to Respondent Vecchio by Detective Galnick upon her retirement. Respondent Vecchio denied that the Gallery magazine belonged to him. He did not know who put it there and had never looked at it. He claimed that while he had used that desk for about six months, he never observed the magazine in it. He did not recall answering “No” at an Official Department Interview to “Anyone else have that desk but you, and I am not saying going to use it, but anybody can sit at that desk besides you?”

Respondent Vecchio also admitted that inside his locker was a small bottle of Southern Comfort. This was not something he “usually” drank, and he denied drinking from that bottle on Department premises. The used bottle of Southern Comfort, Respondent Vecchio claimed, was given to him as a Christmas gift by police officers in the precinct downstairs “for doing something for them.”

Respondent Vecchio testified that he was arrested in November 2004 on two counts of Official Misconduct, one for Sellers and one for S.L. His arrest was processed as a DAT. Respondent Vecchio stated that Maldonado asked Ward questions about tattoos and piercings, then Ward asked Respondent Vecchio. Respondent Vecchio told them about these characteristics, but no photographs were taken.

Respondent Vecchio testified that his first trial, before Staten Island Criminal Court Judge Desmond Green, ended in a mistrial. The case was re-tried in the same court. Judge Matthew Sciarrino dismissed the charge relating to S.L., Respondent Vecchio asserted, after Masiello testified. He was found Not Guilty on the charge pertaining to Sellers.

Respondent Vecchio denied preparing the computer-generated photo array containing Damon Jacobs (RX-Z). He claimed that neither he nor Respondent Holbert were trained in how to do so. He contended that Percia, and, he believed, Manzi, were trained to generate photo arrays in this manner. Respondent Vecchio contended that when he prepared photo arrays, he pulled Polaroid photographs from the card caddy and placed them on a paper grid.

Respondent Vecchio denied showing the photo array to S.L., and did not know who did. He stated that he did not visit her in the hospital on October 28, 2003 (the date marked on the array by S.L.), and was not informed that anyone did or that S.L. made an identification. The photo array was not in his case folder while he had that folder. S.L.'s testimony at the second criminal trial that the Respondents showed her the array was mistaken. Respondent Vecchio asserted that it was not uncommon for a supervisor to assign another detective to work on a case if, for example, the assigned detective was RDO.

#### Respondent Holbert's Case

Respondent Holbert testified on his own behalf.

#### Respondent Holbert

Prior to May 18, 2004, Respondent Holbert was assigned to the 123 Squad. He had been a member of the Department for almost 21 years, and believed he was promoted to Detective in 2004. He had made approximately 400 arrests in his career, and participated in perhaps another 400. He was the father of two sons.

Respondent Holbert stated that on October 22, 2003, he and Respondent Vecchio responded to SIUH South's ER, possibly around 10:00 a.m., after receiving a call regarding an

assault victim there. Mazzuki was present, as were doctors and nurses. The Respondents were informed that a female, S.L., made a complaint that she had been raped. She was located in an ER bed.

The Respondents attempted to speak to S.L., but she was not coherent. "She looked like one of those 1970 drug addicts who was spaced out on LSD. . . . She was way out. . . . not of this earth right now, present mind." S.L. had some bruises, possibly on her thighs, arm and neck. When Respondent Holbert spoke to S.L., he attempted to get information about the rape, but did not consider what she told him "information." Instead, S.L. "was talking about some kind of drug kingpin, and she was naming every name in the alphabet." Respondent Vecchio also attempted to interview S.L., but she answered with "[g]ibberish." Respondent Holbert did not recall being present when Mazzuki spoke to S.L.

Respondent Holbert believed that the Respondents had a Polaroid camera with them, and usually would take one on an assignment like this.

Originally on direct examination, Respondent Holbert stated that he took some photographs of S.L.'s bruises. He later testified that he did not take any pictures of S.L. that night and was not present when the pictures were taken. He did not observe Respondent Vecchio taking any photographs.

Respondent Holbert stated that he directed Mazzuki to take pictures. He asserted that Mazzuki gave him some photographs, which he gave to Respondent Vecchio, the lead investigator on the matter, for the case folder. Respondent Holbert believed Mazzuki used the squad's camera.

Respondent Holbert stated that he believed they were about to take photographs of S.L.'s injuries, when S.L., who was "babbling on about an injury," completely disrobed.

Respondent Holbert exclaimed, "[W]hoa," and left the immediate area of the bed, which was behind a curtain. He had closed the curtain originally because S.L. was a crime victim and the other patients should not have observed what was happening.

Respondent Holbert stated that he and Respondent Vecchio next went to SIUH North for, the witness believed, "some kind of sex rape kit." The Respondents left SIUH North and went to S.L.'s residence. Nichol, Mazzuki's partner, was present with CSU personnel. Respondent Holbert directed Nichol to bring the vouchered evidence back to the 123 Precinct.

Respondent Holbert testified that he did not find S.L.'s allegation to be credible, and so informed Manzi. He told Manzi that he had never heard of a rape victim that "removes her clothing and allows another male . . . to actually see her naked body. . . . Usually they don't want to be interviewed by men, let alone just removing their clothing." Respondent Holbert thought S.L. might be trying to get back at a boyfriend. He believed, however, that in case he was wrong, the DA's Office should make the determination.

Three or four days later, October 26, 2003, at the latest, the Respondents returned to SIUH North. Respondent Vecchio told him they needed to go back, at Manzi's direction, to follow up with S.L. and take additional photographs. The detectives were escorted by SIUH security personnel to S.L.'s floor, and had to stop at the nurses' station and state why they were present. A nurse had a security supervisor speak to the Respondents. Respondent Holbert recalled that the supervisor wanted to know why they had returned. He made them sign something to say that they were there, or at least took their names down. Respondent Holbert asserted that taking into account the security personnel and the nurses, at least five people were aware that the Respondents were with S.L.

The Respondents were with S.L. for five to ten minutes. The room had two beds, but S.L. was the only patient there. S.L. was in the bed closest to the window. "Because she was a suicide patient," S.L.'s room was "within feet of the head nurse's station" and other personnel.

Respondent Holbert did not recall the name of the nurse that sat with them, but she was a black woman and in her late 40s or early 50s. Aside from possibly greeting S.L., Respondent Holbert did not speak to her. He talked to the sitter and "kind of made fun of" S.L., "how far gone she was." Respondent Holbert asserted that S.L. "was even more whacky" than she was at the ER. She was wearing heavy makeup, "had a silly smile on her face, and she kept tilting her head from side-to-side, and laughing and smiling, and kind of freaked me out." S.L. appeared to be under the influence of something. She was made up in a "Raggedy Ann look face," with red circles, "real lady of the night kind of lipstick." Respondent Holbert did not know exactly what the cause of S.L.'s condition was, and he agreed that it could have been due to medication. Respondent Holbert asserted that S.L. was fully clothed. He believed S.L. was wearing her own pajamas, not a hospital gown.

Respondent Holbert "presume[d]" that photographs of S.L. were taken while he was in the room because he believed Respondent Vecchio had a camera with him. Respondent Holbert believed it was a Polaroid camera, and he observed, at most, three or four of what appeared to be camera flashes.

While this was occurring, Respondent Holbert was speaking to the sitter. The sitter never left the room. Respondent Holbert could see part of S.L.'s body, but not her head because the curtain was blocking it. The curtain was "basically pushed back" and was not being used, but it still covered "the top portion of her head."

Respondent Holbert was about five or ten feet away from S.L.'s bed. He heard Respondent Vecchio and S.L. speaking, but was not concentrating on it and did not hear the exact content of the conversation. He would not have heard Respondent Vecchio tell S.L. to get on all fours, and did not hear him tell her to spread her legs. He would have observed if S.L. attempted to disrobe or pose on all fours, and would not have allowed that to happen.

The Respondents left the room after Respondent Vecchio finished taking the photographs. Respondent Holbert stated that he did not ask to see the photographs, Respondent Vecchio never showed him any photographs from that date, and they did not discuss photographs after they left.

Respondent Holbert testified that after visiting S.L., he had no further activity on S.L.'s case. Respondent Holbert denied preparing RX-Z, the photo array containing Damon Jacobs, and did not know who did. He was not present on October 28, 2003, to show S.L. the array at SIUH North, and was not aware of any member of the service that did. He denied that around October 2003, he had the ability to prepare computer-generated photo arrays, and to his knowledge, Respondent Vecchio did not either. Other members of the squad did have that ability.

Respondent Holbert testified that on January 29, 2004, Respondent Vecchio told him that they needed to pick up a perpetrator on a leaving-the-scene case. Respondent Vecchio was the assigned detective. They went to the home of Kristina Sellers. Respondent Holbert believed that Respondent Vecchio made introductions and told Sellers why they were there. They waited for a while at the house, Respondent Holbert believed, because Sellers wanted to wait for her father to get there. Sellers, who was 18 or 19 years old, seemed nervous and may have started to cry.

Eventually, Sellers's father arrived home and Sellers was removed by car to the 123 Precinct for arrest processing. Mr. Sellers followed them into the precinct. After Sellers was taken into the squad room, Respondent Holbert worked on his own cases at a desk belonging to Detective Craig Nealon.

Respondent Holbert chose Nealon's desk because it was not near the holding cell. It was located about 25 feet away. The desk was not visible in RX-HH, a photograph with the gun lockers in the foreground and the holding cell in the background. The cell area was to Respondent Holbert's right. While sitting at Nealon's desk, Respondent Holbert could not see the blue door to the lounge (featured in RX-II).

Respondent Vecchio worked on the processing of Sellers, which Respondent Holbert described as a routine DAT matter. The only possible unusual thing was that Sellers might have been crying or "whimpering" a little in the cell.

Respondent Holbert was not present in the squad room or at Nealon's desk the entire time. Respondent Holbert did not recall if Respondent Vecchio spoke to Sellers.

On cross-examination, Respondent Holbert stated that he may have seen Respondent Vecchio walking Sellers outside the cell, but did not know for what purpose. He did not recall Respondent Vecchio entering the cell with a camera. Respondent Holbert explained that it was not his case, and remarked that Sellers was "just a harmless 18 year old female" that got arrested "for a minor – and I do mean minor – violation . . . so it wasn't like you had a hardened criminal that I had to watch Richie's back and pay attention to what was going on."

Respondent Vecchio did not ask Respondent Holbert if he needed to take a photograph of Sellers's breast piercing for purposes of the case folder. Respondent Holbert would not have taken the nipple-piercing photograph under any circumstances other than if the person "was



DOA.” Respondent Holbert did not know or “recall” whether Respondent Vecchio took any photographs of Sellers that night. Respondent Holbert did not speak about any such photographs with Respondent Vecchio or Sellers.

Respondent Holbert testified that marks, tattoos and piercings, and their location on the body, were supposed to be noted on the OLBS. Respondent Holbert agreed that there was no requirement on the OLBS to take photographs of these special characteristics, especially on a DAT.

Respondent Holbert asserted that the first time he saw the photographs in DX 15-29 was at his first Official Department Interview in approximately December 2004. The interview was conducted by Moore, Chapman and Maldonado. Respondent Holbert stated at the interview that he was not present for the taking of DX 15-29.

Respondent Holbert testified that it was not possible that DX 15-29 were taken while he was in the room with Respondent Vecchio because there was “no way that this victim could have gone into all these poses without me actually seeing or the nurse that I was speaking with having seen her do any of this posing.”

Respondent Holbert maintained that it did not appear that S.L. “really has any makeup on” in DX 15-29. S.L.’s smiles in DX 15-29 were different from those when he visited her the final time at SIUH North; her smiles in the photographs were “smiles of joyfulness,” but were “EDP” during his visit. Respondent Holbert believed, however, that S.L.’s hair was in a similar braided fashion as shown in DX 15-29.

Respondent Holbert testified that the account he gave at the first interview regarding the Sellers arrest was the same as his account in the Trial Room and at the Criminal Court trials.

Respondent Holbert stated that he was questioned in a second Official Department Interview in June 2005, and repeated the same account.

### FINDINGS AND ANALYSIS

#### Disciplinary Case No. 79920/04: Vecchio – photographs

#### Specification Nos. 1, 5 & 7

These specifications relate to the Sellers incident. Specification 5 charges that Respondent Vecchio committed the criminal offense of Official Misconduct (Penal Law § 195.00 [1]) in taking the photograph of Sellers's pierced left nipple. Specification 7 charges that this act was contrary to the Patrol Guide as it was wrongful and contrary to the good order, efficiency or discipline of the Department (*see Patrol Guide* § 203-10 [5]). Specification 1 charges Respondent Vecchio with possession of the photograph.

Regarding Specification 5, the Department was required to prove, by a preponderance of the credible evidence, that Respondent Vecchio intended to obtain a benefit or deprive another person of a benefit by taking the photograph. The benefit, for purposes of the Official Misconduct statute, does not need to be monetary, and can be of an intangible nature. *See People v. Feerick*, 93 N.Y.2d 433, 446-47 (1993) (citing with approval the conviction of officer who gave ex-girlfriend's mother a seatbelt ticket when she was properly restrained, and frequently aimed a police spotlight into her house). In fact, the benefit can be to satisfy desires or interests that could be classified as salacious or overtly sexual, even though no sexual contact occurs. *See State v. Parker*, 592 A.2d 228 (N.J. 1991) (New Jersey's Supreme Court, analyzing almost identical statute as New York's, and noting evidence that defendant teacher displayed sexually-explicit magazines to her students, had them make cutouts of the magazines, and

discussed her and others' sexual interests with the students, ruled that jury could have found these acts were done "to satisfy her own interests"); State v. Stevens, 558 A.2d 833 (N.J. 1989) (where police officer allegedly conducted unauthorized strip searches of females, but without touching them, prosecution needed to prove that defendant's purpose was "to gratify his sexual desires").

Here, the Department established that Respondent Vecchio had an interest in tattoos and piercings. Respondent Vecchio noted that he had "roughly" six tattoos. He admitted that he might have mentioned his own nipple piercing to Sellers. Sellers recalled that Respondent Vecchio displayed a gold barbell tongue piercing to her, and he agreed that he at least mentioned it to her. Thus, the Court rejects Respondent Vecchio's disingenuous claim that his interest in tattoos and piercings was "slight."

Further evidence that Respondent Vecchio was using the nipple photograph to his personal benefit is the fact that the picture, or at least one copy of it, was found not in the 123 Squad case folder on the leaving-the-scene complaint, but in Respondent Vecchio's gun locker as part of a stash of similar photographs, including the nude set of S.L. Polaroids (DX 15-29), and the other tattoo/piercing photographs of Sellers (DX 2-6). Respondent Vecchio's explanation – that he did not want to put the nipple photograph in the Squad case file because it might get lost – fails because he could have stapled it to the file as he did the much more mundane mugshot photographs.

Respondent Vecchio's claim that investigative material was stored in his gun locker is further undermined by the fact that, although he claimed to have made about ten arrests a month during the year he was in the 123 Squad, the only photographs found in his locker were nude

pictures containing tattoos and piercings. There were no routine photographs from other arrests or cases.

The only reasonable conclusion is that Respondent Vecchio took and stored the Sellers nipple photograph for his personal viewing.

The Department also demonstrated, as was necessary to prove Official Misconduct under Specification 5, that Respondent Vecchio knew taking the nipple photograph was an unauthorized exercise of his official function that day, which was to conduct the arrest processing of Sellers. He may have been, as he asserted, a rookie detective at the time, but had been a uniformed member of the Department for about fifteen years. It is inconceivable to the Court that he could have believed it was necessary to take the tattoo/piercing photographs. Respondent Vecchio could not have believed that he was authorized to lead an 18-year-old scared female into a lounge area of a squad room where they were alone, and to photograph her nude breast.

Further, there was no law-enforcement purpose to the nipple photograph. The nipple photograph did not tend to identify Sellers as a gang member or some other individual whose tattoos or piercings might be relevant. Finally, if the complaining witness in the leaving-the-scene case had given a description of the suspect and was prepared to make an identification, the photograph, which showed only Sellers's pierced left breast, would not have been of any use.

The Court also notes that Respondent Vecchio lied to Sellers when she asked, during the controlled phone call, whether there were additional copies of the photograph besides the one that went with the DAT package. This untruth suggests that Respondent Vecchio was trying to hide what he knew was a misdeed. His argument that he had no obligation to tell Sellers the truth fails because he could have told her that a copy of the photograph was kept at the precinct

for future court use. In fact, if Respondent Vecchio's testimony as to why he kept the photograph in his locker was truthful, such a statement about future court use would have been true and accurate, and there would have been no reason why he could not have answered Sellers's inquiry.

Accordingly, the Court finds Respondent Vecchio Guilty of Specification 5.

The Court also finds Respondent Vecchio Guilty of Specifications 1 and 7. These specifications do not charge a Penal Law offense. Rather, Specification 7 alleges that the taking of the nipple photograph violated the Patrol Guide because it was prejudicial to the good order, efficiency and discipline of the Department. Specification 1 alleges that Respondent Vecchio's possession of the nipple photograph similarly violated the Patrol Guide. The Court concludes that his photographing of a female defendant's nipple piercing for no valid reason, then keeping it in his locker, was contrary to the good order, efficiency and discipline of the Department.

#### Specification No. 2

Respondent Vecchio is charged in the second specification with possessing a bottle of Southern Comfort, an alcoholic beverage, in his locker, outside the scope of his employment, in violation of *Patrol Guide* § 203-06 (2). A partially used bottle of Southern Comfort was found in his locker. On summation, Respondent Vecchio's counsel suggested, "With regard to the alcohol, no question. He had it, it was in his locker. I am not going to waste my time on that nor this Court's time." Therefore, the Court finds him Guilty.

Specification No. 3

The third specification charges Respondent Vecchio with possession of "pornographic" materials at work. These include the Gallery magazine (DX-37) and the obese women playing cards (DX-36). Both items were found in a desk at the 123 Squad that, the Department alleges, belonged to Respondent Vecchio. Respondent Vecchio admitted possessing the cards, stating that a retiring detective gave them to him as a gag gift upon her retirement. He disclaimed, however, ownership of the Gallery magazine, noting that other personnel used the same desk.

First, the Court cannot conclude that the playing cards constituted pornographic material. They are inappropriate, and Respondent Vecchio so conceded on summation. Nevertheless, the women in the cards are not actually nude, in the sense that their breasts and genitals are covered. The cards cannot be construed as pornographic by a preponderance of the credible evidence.

The Court finds that the Gallery magazine, while certainly pornographic, cannot fairly be ascribed to Respondent Vecchio. The magazine is dated March 1994, and its front and back covers are missing. The Court seriously doubts that Respondent Vecchio, who had been assigned to the 123 Squad only for about one year, brought the magazine into the squad room and put it in his desk. Furthermore, the Department presented no evidence as to what other materials were in the desk, or even its general state of clutter, so as to support an inference that he must have seen it. In fact, Respondent Vecchio testified on cross-examination that he simply placed his own belongings in the desk and did not clean it out.

In sum, because the Department failed to prove that Respondent Vecchio possessed any pornographic materials, he is found Not Guilty of Specification 3.

Specification Nos. 4, 6 & 9

These specifications involve DX 15-29, the set of nude photographs of S.L. taken in her hospital bed. Like the specifications relating to Sellers, the S.L. specifications charge Respondent Vecchio with Official Misconduct in taking the pictures, with violating the Patrol Guide by taking the pictures, and with violating the Patrol Guide by possessing the pictures. There is no question that the photographs are "lewd," as the specifications charge, in the sense that they appeal to a sexual interest in persons who took them or might view them.

The Court also finds that Respondent Vecchio took the photographs. This conclusion is supported by circumstantial and direct evidence.

Respondent Vecchio was the assigned detective on S.L.'s rape case. He also had a motive to take the photographs. As noted supra, Respondent Vecchio had a significant interest in tattoos and piercings. At least four separate tattoos and piercings are shown in DX 15-29, including a clitoral or clitoral-hood piercing.

The photographs were taken by someone using a 123 Precinct Polaroid camera. A Polaroid picture contains two rows of film lot numbers on the reverse side. The top row of numbers on the photographs in DX 15-29 is "110241962." The same number appears on DX 8-14, the clothed photographs of S.L. taken at the SIUH South emergency room by either Mazzuki or the detectives or both, but agreed by all to be appropriate. The second row of numbers on DX 8-14 begins with "1346," but on DX 15-29 those numbers begin "1347" or "1348." This evidence suggests that the same camera was used to take both sets of pictures, and that DX 8-14 was, as the testimony indicated, taken first.

The photographs were discovered in Respondent Vecchio's gun locker, along with the Sellers nipple photograph. Although Romanzi, the IAB investigator, did not recall exactly how

the photographs were maintained in the locker, it is clear that they were not being kept as evidence, but as a personal stash of lewd pictures.

Respondent Vecchio admitted that he returned to the hospital to follow up with S.L., but denied taking a camera with him. That is contradicted by Respondent Holbert, who testified, more credibly, that Respondent Vecchio did return with a camera at the direction of their supervisor, Manzi. The original photographs taken at the ER do not have great lighting, so it makes sense that the detectives would seek to obtain better ones.

Respondent Vecchio's testimony of how he came into possession of DX 15-29 is not credible. He asserted that Caden, the assistant district attorney on S.L.'s rape case, asked him to go to S.L.'s home to follow up with her. There, he claimed, S.L. gave him a white envelope and said it was more evidence for the case. Later, he said, he looked in the envelope and found DX 15-29. He claimed that he put the photographs in a yellow interoffice-type of envelope, and put that envelope in his locker.

Respondent Vecchio's account is consistent in certain important respects with a statement by S.L. at the live interview with IAB. She said that Respondent Vecchio came to her house, at her request, to pick up more evidence. This evidence, she stated, was broken and bloody fingernails.

Maldonado, another IAB investigator, examined the official 123 Squad case file for the rape case. Inside was an envelope with broken fingernails or fingernail clippings, as well as DX 8-14, the ER photographs of S.L. The Court notes that CSU did not recover any fingernails as serology evidence when they responded to S.L.'s residence (see RX-GG, CSU report).

The Court concludes that Respondent Vecchio's account is not accurate. It shows that he knew the photographs in DX 15-29 did not constitute evidence, because he placed the true



evidence – the fingernails and the ER photographs that appropriately showed bruises on S.L. – in the case file. His claim that S.L. gave him DX 15-29 as evidence, and that he intended to give them to Caden eventually, is false because he never treated the nude photographs as evidence and instead placed them in his gun locker. It is notable that Respondent Vecchio, in his testimony, never mentioned receiving the fingernails from S.L. If he did, he would have had to explain why he put the fingernails in the case file but put the photographs in his locker, without even leaving a reference in the file that there were additional photographs.

The Court rejects Respondent Vecchio's argument that because S.L. signed a photo array of the rape perpetrator (RX-Z) and dated it October 28, 2003, the photographs might have been taken by another member of the Department on that day because neither Respondent knew how to produce a computer-generated photo array. Respondent Vecchio also pointed out that in the second trial, S.L. insisted that the Respondents visited her at SIUH only twice, until confronted with the photo array, whereupon she claimed that she had forgotten about the array, and that there was a third hospital visit by the Respondents. None of this changes the fact that Respondent Vecchio's account of how he came into possession of DX 15-29 is demonstrably false.

Much was made by the Respondents of the "sitters" that were assigned to accompany S.L. during her stay at SIUH, literally sitting next to her so she would not hurt herself. First, no sitters are present in DX 15-29, demonstrating that they were not always literally at "arms distance" from S.L. as the hospital's manual on suicidal patients (RX-FF) supposedly required. Second, it is clear that the photographs were taken, and with a camera belonging to the 123 Precinct, if not specifically the 123 Detective Squad. Further, no one disputes that the pictures are grossly inappropriate. If the sitter really was always present in the room, then she sat idly by

while a suicidal, mentally ill patient was pornographically photographed. The likelier explanation is consistent with S.L.'s accounts: one or both Respondents asked the sitter to leave, she left, and the pictures were taken.

In sum, the Court concludes through the circumstantial evidence that Respondent Vecchio took the photographs. See Matter of Perez v. Safir, 249 A.D.2d 176, 177 (1st Dept. 1998) (police officer, accused of conspiring with tow truck driver to steal battery from towed car, testified that he did not know the battery was taken from the car; this was corroborated by tow truck driver's claim that he took battery from car and sold it to officer without officer's knowledge; these accounts "raised issues of credibility that were rationally resolved by rejection of the series of coincidences urged by" the officer).

The Department also proved Respondent Vecchio's guilt through the direct evidence of S.L.'s statements and testimony at prior events. The Court notes that Respondent Vecchio's assertion that the Criminal Court judge at the second trial found S.L. "incredible as a matter of law" is not supported by any evidence presented to this tribunal, and in any event would not estop this Court from relying on her. The only fact this body is concerned with is whether Respondent Vecchio took the photographs. In that regard, the Court credits S.L. See Matter of Ayala v. Ward, 170 A.D.2d 235 (1st Dept. 1991) (hearsay may constitute substantial evidence if it is sufficiently reliable and probative on the issues to be determined; here, record showed no bias or motive on part of officer's girlfriend or investigators, and by all criteria, girlfriend was reliable).

It is not completely clear how S.L. became involved in IAB's investigation of the Respondents, which began, according to the IAB Call Out Log (RX-B), with Sellers's complaint.

The most likely scenario, based on the evidence presented to this Court, is one testified to by S.L. in the second criminal trial.

Romanzi spoke to S.L. by telephone on May 19, 2004, the day after he and other IAB investigators entered the 123 Squad, searched Respondent Vecchio's locker, and found the photographs. It stands to reason that Romanzi called S.L. after finding DX 15-29. Romanzi told S.L. that he was calling from the New York City Police Department, but did not mention IAB. In fact, he portrayed the interview as a "quality control" review of "serious crimes."

At trial, Romanzi stated that he first determined that the person in the photographs was not Sellers. He "then had an idea who it may have been so" he went through Respondent Vecchio's desk and found part of S.L.'s case folder, which Romanzi knew had been assigned to the 123 Squad. Romanzi "surmised" that the person in the photographs and the complainant from the rape case were the same person.

All of this tends to support S.L.'s assertion that she contacted Klein, the civil attorney, after talking to Romanzi, once she realized that she had been taken advantage of. In contrast to the live IAB interview, the 50-h hearing, and the two criminal trials, S.L.'s tenor during the Romanzi interview is reserved. She certainly did not appear in that conversation to be someone who was out to falsely accuse Respondent Vecchio of misconduct. Nevertheless, she did contend, before speaking to an attorney about bringing a civil action, that Respondent Vecchio took DX 15-29. S.L. named him without prompting as the detective who handled her case. Moreover, she did not mention DX 15-29 until later in the interview when Romanzi told her about photographs where her hair was braided and asked her to describe them "and how you were positioned in the photos." It was then that she first stated that "they had asked me to take

all my clothes of and to spread my legs and take photos so that they could show the bruises on my thighs and stuff.”

Having determined that Respondent Vecchio took the DX 15-29 photographs, the Court also determines that he is Guilty of Specification 4 in that he committed Official Misconduct in taking the photographs. The act of photographing S.L. related to his official duties because he went to the hospital to re-interview a witness on a case assigned to him. There is no question that he knew, as any member of this Department would, that he was not authorized to take what amounted to a pornographic photo shoot of a complaining witness. It follows that the photography violated the Patrol Guide, as it was prejudicial to the good order, efficiency and discipline of the Department. Thus, Respondent Vecchio is Guilty of Specification 6.

Finally, Respondent Vecchio’s possession of the inappropriate photographs in his gun locker as part of a personal stash of similar pictures was similarly prejudicial to the good order of the Department. Therefore he is Guilty of Specification 9.

#### Specification No. 8

In the eighth specification, Respondent Vecchio is charged with Official Misconduct for keeping the DX 15-29 photographs in his gun locker after he took them. The Court finds him Not Guilty because the possession of the pictures was not an “act” that was “an unauthorized exercise of his official functions” within the meaning of the Official Misconduct statute. The “unauthorized” act targeted by the statute must be beyond the public servant’s authority in the ultra vires sense, i.e., it must be an abuse of authority, and not just something the officer was not supposed to do. See Feerick, 93 N.Y.2d at 445, 448. Respondent Vecchio’s Official Misconduct in taking the photographs was addressed in Specification 4. The Court finds, however, that

Respondent Vecchio's possession of the photographs is not the kind of abuse of authority that the Official Misconduct statute was meant to proscribe.

81323/05

Disciplinary Case No. ~~79920/04~~: Holbert

Specification Nos. 1 & 2

Respondent Holbert is charged with failing to report the serious misconduct of Respondent Vecchio in taking the DX 15-29 photographs. He is also charged with impeding the Department's investigation into this incident by giving misleading answers in his Official Department Interviews. Thus, the Court must determine whether Respondent Holbert was present while Respondent Vecchio took these pictures.

Respondent Holbert testified that he went to SIUH a second time with Respondent Vecchio to visit S.L. This was at the direction of their supervisor, Manzi, who wanted better photographs than those taken in the emergency room. Respondent Holbert stated that he was not paying attention while Respondent Vecchio took photographs of S.L., but knew those pictures could not have been DX 15-29 because he would have seen S.L. posing like that. Respondent Holbert also described S.L. as wearing different makeup and clothing during his second visit, i.e., heavier, "lady of the night" or "clown" makeup and her own pajamas instead of what DX 15-29 portrays: a normal amount of makeup and a hospital gown. He also asserted that in contrast to her happy appearance in DX 15-29, during his visit she appeared to be an emotionally disturbed person.

While the Court has credited Respondent Holbert's assertion that Respondent Vecchio brought a camera to SIUH, at their supervisor's direction, on their follow-up visit to S.L., the Court rejects Respondent Holbert's self-serving statement that he was unaware of any

misconduct by Respondent Vecchio inside S.L.'s hospital room. First, the Court has already concluded that Respondent Vecchio took the photographs. Respondent Holbert's testimony would mean that Respondent Vecchio either returned to SIUH alone, or was in the room with S.L. by himself. Respondent Holbert's own testimony indicates that as a rule, the detectives responded to the hospital together, even when Respondent Holbert had nothing to do but sit in the room with Respondent Vecchio.

Further, Respondent Holbert's account suggests that there is a third set of photographs, taken at an admitted patient's room at SIUH North, showing a fully-clothed S.L. in pajamas, different makeup, and a state comparable to an EDP. No such photographs were found anywhere, whether the S.L. case file from the 123 Squad or Respondent Vecchio's locker. In fact, no photographs of an evidentiary nature were found in Respondent Vecchio's locker, just the six Sellers tattoo/piercing photographs, DX 15-29, and the four professional shots of S.L. (DX-38). In contrast, Respondent Vecchio demonstrated a pattern of placing appropriate photographs in their respective case files. Sellers's file included her mugshots, and S.L.'s file contained the ER photographs, as well as an envelope containing fingernails. This suggests that there was no third set of photographs that would have been comparable to S.L.'s appearance in the ER. If there had been such a set, Respondent Vecchio would have placed it in the case file with DX 8-14. The Court concludes, therefore, that Respondent Holbert's self-serving attempt to distance himself from Respondent Vecchio's actions cannot be credited.

The Court also notes that S.L. stated in her hearsay accounts that Respondent Holbert was present while the photographs were taken. Contrary to Respondent Holbert's summation argument, it is not the case that in the first interview with S.L., conducted by Romanzi on May 19, 2004, "you will see no complaints about Detective Holbert," and that only in the second

interview, once she hired a lawyer, “she is starting to say that she has a problem with John Holbert.” In fact, what S.L. said in the Romanzi interview was that she did not recall the name of the detective that was Respondent Vecchio’s partner. When Romanzi asked her about “some additional photos where . . . your hair is braided. Possibly several days later it appears that you’re in the hospital.” S.L. was first unsure whether she remembered those pictures, then said, “*He* took two sets of photos,” once when she first was “entered” into the hospital, and “then *he* came back and *he* took more when I had already been there for three days because *they* said the bruises would look darker.” She added that “*they* had asked me to take all my clothes off and to spread my legs.” As such, S.L.’s original statement to the Department supports the conclusion that Respondent Holbert was present while DX 15-29 were taken.

Respondent Holbert himself testified that he would have seen Respondent Vecchio taking photographs like those in DX 15-29. Because the Court concludes that Respondent Holbert was present while Respondent Vecchio took those pictures, it also concludes that Respondent Holbert observed Respondent Vecchio’s conduct. There can be no question that Respondent Vecchio’s conduct was “serious misconduct” within the meaning of *Patrol Guide* § 207-21 (now replaced with “other misconduct,” see Interim Order 9, issued Apr. 7, 2008). As such, Respondent Holbert is Guilty of Specification 1 in that he failed to report the misconduct.

The Court also determines that Respondent Holbert is Guilty of Specification 2 because he gave misleading answers during his Official Department Interviews that impeded the Department’s investigation into the S.L. matter. Contrary to Respondent Holbert’s argument, his statements at the interviews do not fall within the safe harbor provision of *Patrol Guide* § 203-08, Note, paragraph 3. First, he is not charged with making a false official statement; he is charged with impeding an investigation by misleading the Department during his interviews. In

any event, his statements were not mere denials of misconduct. Rather, they “creat[ed] a false description of events,” which *Patrol Guide* § 203-08 still proscribes.

Additionally, there can be no question that Respondent Holbert’s false statements impeded the Department’s investigation. His answers appear to have been tailored to distance himself from the investigation by feigning ignorance. In fact, the IAB investigator that conducted the second interview, Sergeant Michael Aprile, stated that the first interview raised unresolved questions. Specifically, the investigators appear to have wanted to know how Respondent Vecchio could have taken DX 15-29 in the presence of Respondent Holbert and the sitter without either of the latter two knowing. See Disciplinary Case No. 77182/01 (officer pleaded Guilty to impeding an investigation; he gave imprecise answers to an investigator in hopes of distancing himself from the incident under investigation, claiming to not clearly recall where he was in relation to the other participants, and also failed to recall meeting with the participants and discussing the incident the next day). Consequently, Respondent Holbert is found Guilty of Specification 2.

### Specification No. 3

The Court finds Respondent Holbert Not Guilty of failing to report the serious misconduct of Respondent Vecchio in taking the photograph of Sellers’s pierced nipple. The Department did not prove by a preponderance of the credible evidence that Respondent Holbert became aware that Respondent Vecchio took the photograph, or at the very least was about to do so. Sellers’s testimony at most established that Respondent Vecchio asked Respondent Holbert whether he should take the photograph. This does not prove that Respondent Holbert was aware that the photograph was taken, or was about to be taken. Moreover, Respondent Vecchio



testified that he never asked Respondent Holbert about taking the picture. If he had truly asked, it would have helped Respondent Vecchio's cause at trial because it would have tended to show that he was actually not sure whether he was supposed to take the photograph.

Disciplinary Case No. 81292/05: Vecchio – time

DECISION

The Respondent is found Guilty of Specifications 2, 3, 4, and 10; Partially Guilty of Specifications 6, 7, 8 and 9; and Not Guilty of Specifications 1 and 5.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Paul Corr, Sergeant Michael Aprile, and Detective Patrick Straffacio as witnesses.

Lieutenant Paul Corr

Corr was the Integrity Control Officer at the Counterterrorism Division (CTD). Respondent Vecchio, who was on modified duty status, was assigned to CTD. CTD itself was located in Coney Island, Brooklyn. The CTD Warehouse ("the Warehouse") was located at First Avenue and 41st Street, Brooklyn (the industrial area west of the Gowanus Expressway). It took 20 or 25 minutes to travel between the Warehouse and CTD. One of the supervisors at the Warehouse was Sergeant Gadaleta.

Respondent Vecchio lived on Staten Island. Corr obtained the E-ZPass records for Respondent Vecchio's "primary vehicle that he drives to work," and a second vehicle on the

same account. These were an Isuzu and a Chevy Trail Blazer. Corr determined the vehicle Respondent Vecchio drove to work based on records and observations, at CTD, on between two and four occasions. On one occasion, Corr observed the vehicle Respondent Vecchio drove to SICC.

Corr did not subpoena the E-ZPass records of Susan Vecchio (Respondent Vecchio's wife) or determine how many total individual E-ZPass tags the Vecchio family possessed.

On direct examination, Corr testified that Respondent Vecchio's primary vehicle was an Isuzu, which Corr believed was black. Corr asserted that the E-ZPass tag number assigned to the Isuzu was 00805190592 (the "'592 tag"). Corr based this on correlating Respondent Vecchio's departures from the command with the times that the '592 tag passed through the Verrazano-Narrows Bridge toll plaza. Corr testified that the toll plaza on the Verrazano Bridge is on the Staten Island side, and the toll is paid only when entering Staten Island from Brooklyn.

On cross-examination, Corr testified that there were several vehicles on Respondent Vecchio's E-ZPass account, one of which was an Isuzu. Corr admitted that he observed Respondent Vecchio driving two separate vehicles, and did not really know what vehicle Respondent Vecchio primarily drove to work. Corr then stated that he believed one car was a late model Chevy Blazer, which he characterized as an SUV. He believed the other car was a Mazda, and admitted that he "can't say it was an Isuzu." He could not recall if it was a Mazda or an Isuzu.

Corr admitted that in a worksheet dated August 29, 2005, he stated that he observed Respondent Vecchio in a black GMC Suburban. Corr contended, however, that he meant "Suburban" as a generic type of model, "a standard for station wagon, 4 by 4," an SUV, or "a

truck.” Corr admitted that in a worksheet dated September 8, 2005, he stated that he observed Respondent Vecchio in a Chevy Blazer, and did not refer to it as a “Suburban.”

The CTD Training Roll Call, Movement Sheet and Roll Call Adjustment Sheet for March 7, 2005, were admitted as DX-4. On that day, Respondent Vecchio was scheduled to work a 0750x1600 tour. The Roll Call is marked “S/E” for both the sign-in and sign-out times. Corr testified that this meant “see entry,” indicating that the person signed in or out from an “outside wire” – i.e., he telephoned in his sign-in or sign-out time. The “S/E” was a direction to look at the Movement Sheet, which indicated that as of 0750 hours, Respondent Vecchio was “on duty @ SI Crim Ct.” There was a “delayed entry” on the Movement Sheet – the call came in at or after 1800 hours – that Respondent Vecchio was end-of-tour at 1600 hours, and had called from an outside wire. There was an entry by the ’591 E-ZPass tag at the Verrazano toll plaza at 2026 hours.

Corr testified that the Patrol Guide did not allow Respondent Vecchio to charge the Department with time he spent on a case where he was a criminal defendant.<sup>5</sup>

The CTD Training Roll Call, Movement Sheet and Roll Call Adjustment Sheet for March 9, 2005, were admitted as DX-5. Also included were the Command Log, the Warehouse Roll Call, the sign-in log for Staten Island Health Services (SIHS), and E-ZPass records. Respondent Vecchio was scheduled to work a 0450x1300 tour. He signed in at 0440 hours. There is a squiggle in the sign-out time, but it is not a number. The signature is not legible, and Corr asserted that “it doesn’t appear to be his.” The Command Log stated that at 0900 hours, Respondent Vecchio was en route in a private vehicle to “HSD,” i.e., health services division.

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<sup>5</sup> *Patrol Guide* § 206-10, Additional Data, concerning Modified Duty Status, states that a member who is a defendant on a criminal case shall not appear while on duty. Instead, the member is to appear on regular days off or with an authorized excusal.

Respondent Vecchio signed into SIHS at 0929 hours, and signed out at 1006 hours. The '592 tag passed through the Verrazano Bridge toll plaza once at 0913 hours, and again at 1147 hours.<sup>6</sup> Another E-ZPass tag on Respondent Vecchio's account, 00805190591 (the "'591 tag'"), went through the Verrazano at 1726 hours.

The CTD Training Roll Call, Movement Sheet, Roll Call Adjustment, and Warehouse Command Log for March 21, 2005, were admitted as DX-6. Respondent Vecchio was scheduled to work a 0550 x 1400 tour. He signed in at 0535 hours, but the sign-out portion is marked "S/E" at 1400 hours. The Movement Sheet, at 1400 hours, states, "Vecchio E/O/T [end of tour] SI Criminal Court." This was initialed by a supervisor. The Command Log states at 0835 hours, "Det Vecchio [post change] to S.I. Court" by private vehicle.

The CTD Training Roll Call, Movement Sheet, Roll Call Adjustment, and Command Log for March 23, 2005, were admitted as DX-7. Also included were the SIHS log and E-ZPass records. Respondent Vecchio was scheduled to work a 0550x1400 tour. He signed in at CTD at 0540 hours. Corr asserted that the signature on the sign-out space, with 1400 hours indicated, did not appear to be Respondent Vecchio's. The Command Log stated that Respondent Vecchio left at 1010 hours to the Department surgeon. The '592 E-ZPass tag passed through the Verrazano toll plaza at 1026 hours, and Respondent Vecchio signed in to SIHS at 1040 hours. He signed out of SIHS at 1110 hours. The '592 tag did not pass through the Verrazano tolls again on March 23, 2005, although the '591 tag did pass through at 1347 hours.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Log for April 4, 2005, were admitted as DX-8. Respondent Vecchio was scheduled to work a 0550x1400 tour that day. He signed in at 0540 hours. On the sign-out portion of the Roll

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<sup>6</sup> Where E-ZPass records denote to the second the times that a toll was paid, the Court has rounded the times to the nearest minute.

Call, 1420 hours is listed, signed "Vecchio O/S/L," meaning that Respondent Vecchio signed out from an outside line. At 1420 hours, the Movement Sheet indicated that Respondent Vecchio was "EOT SICC." The '592 tag passed through the Verrazano tolls once that day, at 0854 hours. The '591 tag passed at 1555 hours.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, Warehouse Command Log, and E-ZPass records for April 5, 2005 were admitted as DX-9. Respondent Vecchio was scheduled to work a 0550x1400 tour. He signed in at 0530 hours and out at 1400 hours. The Command Log indicated that at 1400 hours, Respondent Vecchio was end-of-tour from an outside wire.

On direct examination, Corr stated that the only E-ZPass movement reflected in the records for April 5, 2005, was the '592 tag passing through the Verrazano toll plaza at 1312 hours. Estimating a 15 to 20 minute travel time from the command to the toll, the Respondent left the command at approximately 1255 hours. On cross-examination, Corr testified that the E-ZPass records of Susan Vecchio (tag 00803479092 [the '092 tag]) indicated a transaction at the Verrazano Bridge at 1411 hours (see RX-G, tag '092 records for Apr. 5, 2005).

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Log for April 18, 2005, were admitted as DX-10. Respondent Vecchio was scheduled to work a 0550x1400 tour. He is signed in at 0530 hour and out at 1415 hours. The Movement Sheet, however, indicated that Respondent Vecchio was end-of-tour at SICC, and "O/S/L" is written. The Command Log stated that Respondent Vecchio went to SICC at 0800 hours.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, Warehouse Command Log, and E-ZPass records for April 19, 2005, were admitted as DX-11. Respondent Vecchio was scheduled on that day to work a 0550x1400 tour. Corr alleged that while Respondent

Vecchio signed in at 0540 hours, the sign-out time was illegible. Both the Command Log and Movement Sheet stated that Respondent Vecchio went to the Warehouse at 0550 hours. The '592 tag passed through the Verrazano tolls at 1354 hours; this was the only E-ZPass transaction on April 19, 2005. Thus, according to Corr's allegations, Respondent Vecchio would have left the command at 1340 hours.

On cross-examination, Corr stated that the Command Log indicated Respondent Vecchio went to SIHS at 1030 hours. He returned to the Warehouse at 1300 hours, and went to CTD at 1330 hours. There was no E-ZPass indication, however, that Respondent Vecchio crossed the Verrazano Bridge when he went to SIHS.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Log for May 9, 2005, were admitted as DX-12. An Overtime Report submitted by Respondent Vecchio was included also. He was scheduled to work a 0550x1400 tour that day. The sign-out time was marked 1530 hours and "S/E." The Movement Sheet indicated that Respondent Vecchio went end-of-tour at 1530 hours from SICC. He submitted an overtime request for 0550 hours to 1530 hours. On the Overtime Report, Respondent marked his "Command" as CTD; for "Cmd. / Location Where Duty Performed," he also wrote CTD.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Log for May 11, 2005, were admitted as DX-13. Also included were the SIHS log and E-ZPass records. Respondent Vecchio's tour for that day was 0450x1300. He signed in at 0430 hours and signed out at 1300 hours. The Command Log, however, indicated that at 0900 hours, Respondent Vecchio went to "H.S.D." The '592 E-ZPass tag was present at the Verrazano Bridge at 0957 hours. Respondent Vecchio signed into SIHS at 1024 hours, and left

at 1051 hours. The only other E-ZPass transaction for that day was that the '591 tag passed through the Verrazano toll at 1618 hours.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Log for May 16, 2005, were admitted as DX-14. Also included was an Overtime Report submitted by Respondent Vecchio. His scheduled tour that day was 0750x1600, but the sign-in and sign-out times were both marked "S/E." The Movement Sheet stated that Respondent Vecchio was "PFD," i.e., present for duty at SICC at 0750 hours, then went end-of-tour from SICC at 1800 hours. He submitted an overtime request for the extra two hours, marking the command or location where the duty was performed as CTD.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Logs for May 17 and 18, 2005, were admitted as DX-15. Also included was an Overtime Report submitted by Respondent Vecchio, and E-ZPass records. He was scheduled to work a 0550x1400 tour. The sign-in time appeared to be 0530 hours, but the numeral "3" is fuzzy. The sign-out time was written over with Respondent Vecchio's signature, but it may have been 1600 hours. On the overtime request, he wrote that his scheduled tour had been 0520x1400, and stated that he actually worked from 0520 hours to 1600 hours. The '592 E-ZPass tag passed the Verrazano toll plaza at 1453 hours. The Command Log for May 18, 2005, stated that Respondent Vecchio was present for duty and requested two hours of overtime for May 17, 2005, 1400x1600. Corr agreed the Command Log for May 17, 2005, however, stated that at 1330 hours, Sergeant Durinick, Karnaby, and Respondent Vecchio went to CTD with Trip 7. Durinick signed the overtime request.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Logs for May 18, 2005, were admitted as DX-16. Also included were E-ZPass

records. Respondent Vecchio's scheduled tour was 0450x1300. No sign-out time was indicated, but Respondent Vecchio's signature was present. The Movement Sheet stated that at 0430 hours, Respondent Vecchio traveled to the Warehouse with "Trip 7." The Warehouse Command Log stated that at 0700 hours, he returned to CTD. The '592 tag passed the Verrazano tolls at 0752 hours, and the '591 tag passed there at 1737 hours.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and the first part of the Warehouse Command Log for June 10, 2005, were admitted as DX-17. The second page was admitted as RX-I. Also included were E-ZPass records. Respondent Vecchio's scheduled tour was 0450x1300. He signed in at 0435 hours, but did not sign out. The sign-out signature was illegible, but did not appear to be Respondent Vecchio's in any case. The Movement Sheet stated that he traveled to the Warehouse at 0440 hours with Trip 7. The Warehouse Command Log stated that he was present for duty at 0515 hours. At 1215 hours, the Log stated that he and Durinick went to CTD in two vehicles. The sole E-ZPass transaction for that day was at 1252 hours, when the '592 tag passed through the Verrazano tolls.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Log for June 13, 2005, were admitted as DX-18. Also included was an Overtime Report. Respondent Vecchio's scheduled tour was 0650x1500. The sign-in and sign-out times were both marked "S/E." The Movement Sheet stated that Respondent Vecchio was at SICC as of 0650 hours, and was end-of-tour from SICC at 1700 hours. He submitted an overtime request for the extra two hours, marking the command or location where the duty was performed as CTD.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, Respondent Vecchio's Overtime Report for July 12, 2005, and E-ZPass records were admitted as DX-19. His scheduled



tour that day was 0450x1300. He signed in at 0450 hours, and signed out, but without a time notation. The Movement Sheet stated that Respondent Vecchio and Karnaby went to the Warehouse at 0500 hours. The Warehouse Command Log (RX-J) stated that Respondent Vecchio, Durinick, Karnaby and Police Officer Curley went to the Police Academy at 0640 hours. The sole E-ZPass transaction that day was that the '592 tag passed through the Verrazano toll plaza at 1542 hours. Respondent Vecchio, however, submitted an overtime request stating that he worked until 1630 hours.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, Warehouse Command Log, Respondent Vecchio's Overtime Report for July 14, 2005, and E-ZPass records were admitted as DX-20. Respondent Vecchio's scheduled tour that day was 0450x1300. He signed in at 0435 hours, and signed out, but without a time notation. The Movement Sheet stated that Respondent Vecchio went to the Warehouse with Trip 7 at 0435 hours. The Warehouse Command Log noted him present for duty at 0500 hours. The sole E-ZPass transaction that day was that the '592 tag passed through the Verrazano toll plaza at 1434 hours. Respondent Vecchio, however, submitted an overtime request stating that he worked until 1500 hours.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and Warehouse Command Log for July 15, 2005, were admitted as DX-21. Also included were E-ZPass records. Respondent Vecchio's scheduled tour was 0450x1300. He signed in at 0430 hours, but the sign-out portion was marked "S/E." The Movement Sheet stated that he traveled to the Warehouse at 0440 hours and went end-of-tour at 1330 hours. The Warehouse Command Log stated that at 0800 hours, Respondent Vecchio and Curley went to the Bronx COBRA site in Trip 7 with a large amount of equipment. They returned at 1000 hours. The Command Log also recorded that Respondent Vecchio went end-of-tour at 1330 hours. The sole E-ZPass transaction for that day

was at 1145 hours, when the '592 tag passed through the toll plaza at the Brooklyn-Battery Tunnel. Corr testified that at the Brooklyn-Battery Tunnel, the toll is paid in both directions, whether coming into Manhattan or into Brooklyn.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and E-ZPass records for July 22, 2005, were admitted as DX-22. Respondent Vecchio's scheduled tour was 0450x1300. He signed in at 0430 hours. He signed out, but there was no time notation. The Movement Sheet stated that Respondent Vecchio traveled to the Warehouse at 0530 hours with Trip 7. The sole E-ZPass transaction for that day was at 1253 hours, when the '592 tag passed through the Verrazano tolls. At 1145 hours, the Warehouse Command Log (RX-K) stated that Respondent Vecchio brought equipment to another location.

The CTD Training Roll Call, Movement Sheet, Adjustment Sheet, and E-ZPass records for August 5, 2005, were admitted as DX-23. A Leave of Absence Report (a "28") was also included. Respondent Vecchio's scheduled tour was 0550x1400. He signed in at 0550 hours. He signed out at 1300 hours, writing "L/T" – lost time – in the box. The Movement Sheet stated that Respondent Vecchio went to the Warehouse at 0550 hours with Trip 7. The Warehouse Log stated that Respondent Vecchio was present at 0630 hours with Trip 7. At 1030 hours, Respondent Vecchio and Karnaby took equipment to the Brooklyn COBRA site in Trip 7. They returned with equipment, then went to CTD in Trip 7 at 1200 hours. The sole E-ZPass transaction for that day was at 1233 hours, when the '592 tag passed through the Verrazano tolls. Respondent Vecchio filed a "28" seeking to take one hour as lost time, 1300x1400.

The CTD Training Roll Call, Movement Sheet and Adjustment Sheet for August 9, 2005, were admitted as DX-1. An Overtime Report for Respondent Vecchio on that date was also included. Respondent Vecchio's scheduled tour for that day was 0550x1400 hours, but the

Overtime Report indicated that he worked until 1630 hours, an extra 2 hours and 30 minutes. Gadaleta signed the overtime request. Corr asserted that he inspected the Roll Call at 1540 hours on that day, and that Respondent Vecchio had not yet signed out. Respondent Vecchio's sign-out signature on the Roll Call was not legible. Corr conceded that the Warehouse Command Log stated that Respondent Vecchio went to CTD at 1500 hours.

The CTD Training Roll Call, Movement Sheet and Adjustment Sheet for August 15, 2005, were admitted as DX-2. On that day, Respondent Vecchio was scheduled to work 0750x1600 hours. Corr testified that he inspected the Roll Call that morning, and the sign-in portion was blank. Corr contacted Moore of IAB, who told Corr that Respondent Vecchio was at Staten Island Criminal Court (SICC) that day. There was "an indication" that the court appearance ended at 1010 hours, but Corr did not know if Respondent Vecchio was at the courthouse. Corr asserted that Respondent Vecchio was at SICC as a defendant on his own case. Corr conceded that he went to Respondent Vecchio's residence at 1200 hours, and neither the detective nor "his vehicles" were present.

Eventually, the Roll Call was marked "S/E" for both the sign-in and sign-out times. The Movement Sheet indicated that at 1600 hours, Respondent Vecchio was off duty from SICC. A supervisor initialed next to this line. A second notation, made after 1600 hours, stated that at 0750 hours, Respondent Vecchio was on duty at SICC. This second notation was marked "O/E" for "omitted entry."

The CTD Training Roll Call, Movement Sheet and Adjustment Sheet for September 8, 2005, were admitted as DX-3. Respondent Vecchio was scheduled to work a 0550x1400 tour on that day. The Movement Sheet indicated that he went to the CTD Warehouse at 0535 hours. Corr then observed Respondent Vecchio at SICC at 0915 hours. Respondent Vecchio was using

his own vehicle, not a Department vehicle. Corr determined that Respondent Vecchio was at SICC for a case on which he was a defendant. Corr observed that Respondent Vecchio left court about 1130 hours and drove off. Corr observed Respondent Vecchio at his residence at 1600 hours. Corr inspected the Roll Call at 1950 hours, and Respondent Vecchio had not signed out. The following day, however, Corr observed that Respondent Vecchio's sign-out for September 8, 2005, was marked 1600, then was overwritten as 1400.

On direct examination, Corr claimed that there was no "indication or anywhere at all that respondent returned to work." On cross-examination, Corr was presented with the Warehouse Command Log (RX-F). Corr admitted that the log had an entry that Respondent Vecchio was end-of-tour at 1400 hours. Corr believed this was Respondent Vecchio's handwriting, but could not say for sure whether it had been added in later.

Corr testified that between March 7, 2005, to September 8, 2005, Respondent Vecchio was paid at a rate of \$33.86 an hour. Based on a time-and-a-half rate for overtime, Corr stated that Respondent Vecchio was paid \$490.96 for the 9 hours and 40 minutes he submitted in overtime requests during this period.

Corr stated that the amount of time Respondent Vecchio charged to the Department while present at SICC as a defendant was approximately 60 hours and 45 minutes. He was paid \$2,056.99.

Corr estimated that Respondent Vecchio left work early a total of 18 hours and 40 minutes. He was paid \$631.82 for this time.

Corr conducted an Official Department Interview of Gadaleta (see RX-C, interview transcript). Corr asked Gadaleta if he knew why Respondent Vecchio was on modified duty. Gadaleta responded, "I was never told officially," but believed Respondent Vecchio had been

sick and had disciplinary problems. Gadaleta stated that he was aware that Respondent Vecchio was reporting to court. Gadaleta believed Respondent Vecchio had worked in a Detective Squad, "so you know I assumed that he had court to go to for that. So I really wouldn't even ask him cause I didn't want to know." Corr asserted that Gadaleta did not know if Respondent Vecchio was appearing for a personal matter. Gadaleta never indicated that Respondent Vecchio told him these appearances were for "his own personal case."

Gadaleta stated that he kept notations in a desktop calendar when Respondent Vecchio said he had to appear in SICC. Gadaleta told Corr that he could not produce the calendar, but still had the pages for September 2005. Gadaleta did not say that he would write in the calendar why Respondent Vecchio was going to court.

Of the four possible supervisors for Respondent Vecchio, Corr spoke only to Gadaleta. Corr testified that while a member on modified duty status is supposed to be supervised more closely, he did not feel this occurred in Respondent Vecchio's case.

Corr testified that the Warehouse Command Log was under the control and supervision of the sergeant on duty.

Sergeant Michael Aprile

Aprile was assigned to IAB's "prosecution monitoring" of Respondent Vecchio. His responsibility was to monitor the status of Respondent Vecchio's criminal case.

Aprile was present in SICC on April 4, 2005. Respondent Vecchio's case was called at around 1300 hours. The appearance took five to ten minutes. Aprile observed Respondent Vecchio leave the courtroom, but did not continue observing him after that.

Detective Patrick Straffacio

Straffacio was also assigned to prosecution monitoring. He observed Respondent Vecchio at SICC on August 15, 2005. He did not recall when the case was adjourned, and did not observe whether Respondent Vecchio left court afterward.

Respondent Vecchio's Case

Respondent Vecchio testified on his own behalf.

Respondent Vecchio

Respondent Vecchio was married and had five children. The youngest was 14 years old, and the oldest was 22 years old.

Around March 2005, Respondent Vecchio testified that his family owned six cars: a GMC Suburban, a Rodeo, a Geo Metro, an Isuzu, a Chevy Blazer, and a Mazda MPV. Four of the family members drove at that time: him, his wife, and their daughters Christina and Anna. The family had three E-ZPasses; one was under his wife's name. They kept the E-ZPasses in the kitchen "most of the time," as opposed to affixing them to the windshields. "Whoever was going out, grabbed the car keys, grabbed an E-ZPass and off you went." Occasionally, Respondent Vecchio would wake up and there would be no E-ZPasses left. Sometimes he would forget to take it. Other times, there would be no money left on the E-ZPass he took. He conceded that there was a credit card attached to his E-ZPass account, and that the account was supposed to be automatically refilled, but claimed, "We have had nothing but problems with that E-ZPass account since we have had it." At one point, Respondent Vecchio changed the credit card he

was using for E-ZPass so the problems could be avoided. It might have been only one tag that had the problem.

Respondent Vecchio mentioned that his daughter Christina was a student at Brooklyn College, and went there five days a week during the day. He asserted that there was no particular car he used more than the others to drive to work during March to September 2005.

During his assignment to CTD, Respondent Vecchio would sign in at the CTD building in Coney Island. He would pick up a Department vehicle and drive to the Warehouse, but occasionally a Department vehicle would not be available, so Respondent Vecchio would have to use his private car. A sergeant would sign him into the Warehouse Command Log. Respondent Vecchio testified that he was not allowed to use the Warehouse Log, but stated, "If you were instructed by the sergeant, because he was doing something else, to make an entry, you would do it." When Respondent Vecchio called to sign in or out from an outside wire, he would call a specific number known as FOD, which stood for "Field Office Division . . . Department, Division, Desk, something like that." Usually the FOD was staffed by Officer Cabanero. At least three times, Cabanero did not log Respondent Vecchio in or out, and the ICO at the time, a woman, would ask Respondent Vecchio about it, "and she knew because she had issues with Officer Cabanero not signing people out." The ICO would have Respondent Vecchio sign out from her office.

Respondent Vecchio testified that his main job at CTD was to prepare Personal Protective Equipment (PPE) kits. These were the bags now worn on the leg of patrol officers. Occasionally, Respondent Vecchio would deliver equipment. "Trip 7," he explained, was a particular minivan used by CTD.

Respondent Vecchio testified that his criminal case proceeded in Part AP-2 of SICC. He asserted that the court day would begin with new cases and warrants, and pending cases would be called later. After the case was called, he would have to wait for the orders of protection to be issued. Sometimes he would have to return after lunch to pick up the orders, and even though lunch was supposed to be between 1:00 and 2:00 p.m., the court generally would not start on time after lunch. When pre-trial hearings took place on his case, the testimony occurred later in the afternoon, and occasionally would go past 5:00 p.m.

Respondent Vecchio asserted that he discussed his criminal case with Gadaleta, one of his supervisors. He contended that he told his supervisors, including Gadaleta, Durinick and Sergeant Schatz, that he was going to court as a defendant. "We were a bunch of old wash women, everybody knew everybody's business." Gadaleta lived on Staten Island also and got the local newspaper. "He would come in every day when I was in the paper and tell me, 'Rich, you are in the paper again,' and we would discuss it." Other supervisors had access to Gadaleta's calendar.

Respondent Vecchio testified that on his Overtime Reports, he wrote CTD under "Cmd. / Location Where Duty Performed" instead of SICC, because, referring to the former, "That's my command." He contended, "That's the way I have always filled them out." He denied that it was "an attempt to confuse or mislead someone with respect to where you did the overtime." He contended that he told a supervisor that he had performed the overtime at SICC, but that his overtime requests were never rejected.

Respondent Vecchio could not specifically recall if he returned to work after attending SIHS on the three dates in question.



Respondent Vecchio recalled that one day, the Warehouse Staff outfitted the Police Academy with PPE kits. RX-J, a portion of the Warehouse Log from July 12, 2005, indicated that Respondent Vecchio went to the Police Academy with other personnel in several vehicles, including a box truck. Respondent Vecchio testified that he was with a supervisor the entire day, for which he requested overtime.

On September 8, 2005, Respondent Vecchio stated that he worked at 0550x1400 tour, and that he never changed his sign-out time from 1400 hours.

The Official Department Interview of Respondent Vecchio, conducted by Corr and Sergeant Frank Morrissey, dated March 8, 2006, was admitted as Court Exhibit (CX) 1.

### FINDINGS AND ANALYSIS

#### Disciplinary Case No. 81292/05: Vecchio – time

#### Specification Nos. 1 & 5

The first five specifications relate to September 8, 2005. The Department's theory was that Respondent Vecchio, who was supposed to work a 0550x1400 tour but also attended SICC that day, wrote down 1600 hours as his sign-out time at some point, then changed it to 1400 hours. Corr observed him at home at 1600 hours. Specification 1 charges that Respondent Vecchio was at home during his tour, and Specification 5 charges that he later changed the sign-out time from 1600 hours to 1400 hours. The Department failed to prove that Respondent Vecchio was not on duty until 1400 hours, returning to work after his SICC appearance. In fact, a 1600 hours sign-out time would have entitled him to two hours of overtime, yet there is no evidence that an Overtime Report was submitted. Therefore, Respondent Vecchio is found Not Guilty of Specifications 1 and 5.

Specification Nos. 2 & 8

Specification 2 charges Respondent Vecchio with inappropriately appearing at SICC, while on duty, as a criminal defendant. *Patrol Guide* § 206-10 clearly states that members shall not appear as defendants in criminal cases while on duty. Therefore, the Court finds Respondent Vecchio Guilty of being present, while on duty, at SICC as a defendant on his criminal case on September 8, 2005.

Specification 8 charges Respondent Vecchio with committing the same offense on “approximately eight” occasions between March and August 2005. The Department proved that on March 7, March 21, April 4, April 18, May 9, May 16, June 13, and August 15, 2005, that Respondent Vecchio attended SICC on his criminal case while on duty, and improperly charged the Department with that time, adding up to a total of approximately 60 hours and 50 minutes, and an improper payment of just under \$2,060.

Specification 8 also charges that Respondent Vecchio committed Grand Larceny in the Fourth Degree (Penal Law § 155.30 [1]). Intent to steal is an essential element of the crime of larceny. See Penal Law § 155.05 [1]; People v. Melino, 16 A.D.3d 908, 910 (3d Dept. 2005). Certainly, Respondent Vecchio’s conduct violated *Patrol Guide* § 206-10. It is unacceptable for a member of the Department, charged as a defendant in a criminal case, to seek payment from the Department for time spent appearing in that case, whether the case relates to Department affairs or not. It does not follow, however, that Respondent Vecchio had the mens rea of intent to steal that time and money. The Department sought to show that on his Overtime Reports for the SICC appearances, Respondent Vecchio wrote CTD for location where the overtime was performed, allegedly evincing an intent to deceive the Department. On his Overtime Report for July 12, 2005, however, when he validly earned overtime while working at the Police Academy,

he also wrote CTD in this section. The Court also notes the lack of any evidence that the Department referred this matter to the Staten Island DA's Office, the same body that was already prosecuting Respondent Vecchio on the Sellers and S.L. matters. Thus, the Court finds Respondent Vecchio Partially Guilty of Specification 8, as his conduct violated *Patrol Guide* § 206-10's direct prohibition on that conduct.

Specification No. 3

Specification 3 charges that Respondent Vecchio failed to sign out at the end of his tour on September 8, 2005. Corr testified that he inspected the Roll Call of September 8, 2005, and found that Respondent Vecchio had not signed out by 1950 hours. Respondent Vecchio's tour was scheduled to end at 1400 hours. Therefore, the Court finds him Guilty of failing to sign out at the end of his tour.

Specification No. 4

Specification 4 charges that Respondent Vecchio used his personal car, while on duty, to attend SICC on September 8, 2005. It is well-settled that it is improper for a Department member to use his personal vehicle while on duty, unless the proper administrative procedure is followed, see *Administrative Guide* § 325-14. The Court finds Respondent Vecchio Guilty of Specification 4 in that, on September 8, 2005, he used his personal vehicle to appear, while on duty, at SICC.

Specification Nos. 6 & 10

Specification 6 charges Respondent Vecchio with leaving his tour early on “approximately” ten occasions: March 9, March 23, April 5, April 19, May 11, May 18, June 10, July 15, July 22, and August 4, 2005. The Department proved this on solely the following *three* occasions:

On March 9, 2005, Respondent Vecchio was scheduled to work a 0450x1300 tour. He left the Warehouse at 0900 hours. His '592 E-ZPass tag went over the Verrazano Bridge at 0913 hours. He arrived at SIHS at 0929 hours, and left at 1006 hours. This demonstrates circumstantially that he was using the '592 E-ZPass that day. The Command Log does not indicate a return to the Warehouse, but the '592 tag again passed through the Verrazano tolls at 1142 hours. The Court finds that the Department proved by circumstantial evidence that Respondent Vecchio was still using the '592 tag. Even if he went back to the command, he left at the latest at approximately 1130 hours to make the toll at 1142 hours. Therefore, he left 1 hour and 30 minutes before the end of his tour at 1300 hours.

On March 23, 2005, Respondent Vecchio was scheduled to work a 0550x1400 tour. He left the Warehouse at 1010 hours. The '592 tag went over the Verrazano Bridge at 1026 hours. He arrived at SIHS at 1040 hours, and left at 1110 hours. This demonstrates circumstantially that he was using the '592 E-ZPass that day. There is no additional '592 tag transaction that day. The Court finds that the Department proved by circumstantial evidence that if Respondent Vecchio had returned to work after SIHS, there would be another use of the '592 tag when he went back to Staten Island the second time, to go home. Therefore, he left work 2 hours and 50 minutes before the end of his tour at 1400 hours.

On May 11, 2005, Respondent Vecchio was scheduled to work a 0450x1300 tour. He left the Warehouse at 0900 hours. The '592 tag went over the Verrazano Bridge at 0957 hours. He arrived at SIHS at 1024 hours, and left at 1051 hours. This demonstrates circumstantially that he was using the '592 E-ZPass that day. There is no additional '592 tag transaction that day. Again, if Respondent Vecchio had returned to work after SIHS, there would be another use of the '592 tag. Therefore, he left work 2 hours and 9 minutes before the end of his tour at 1400 hours.

Specification 10 charges Respondent Vecchio with falsifying business records by falsely signing out of work, or having someone else enter sign-out times Respondent Vecchio knew were false, on "approximately four" occasions. The Court finds Respondent Vecchio Guilty of doing so on the above three occasions. It is unclear what date the Department was asserting as the fourth occasion. Nevertheless, Respondent Vecchio is found Guilty of Specification 10 -- Falsifying Business Records in the Second Degree (Penal Law § 175.05 [1]).

However, the Department failed to prove by a preponderance of the credible evidence that Respondent Vecchio left work early on the other dates presented at trial. The Department claimed that Respondent Vecchio always used the same E-ZPass, the '592 tag. The method in which the Department settled on this claim, however, was faulty. It sought to determine whether, for example, Respondent Vecchio was leaving work about two hours before the scheduled end of his tour. It examined the E-ZPass records, which showed the '592 tag passing the Verrazano tolls about two hours prior to end-of-tour. From this the Department concluded that Respondent Vecchio always used tag '592, and thus left about two hours before his tour ended. This kind of circular reasoning is not valid.

Perhaps the strongest evidence that others were using the '592 tag came through the documents of July 15, 2005. This was the day on which the tag passed through the tolls not at the Verrazano Bridge, but at the Battery Tunnel, at 1145 hours. Respondent Vecchio insisted that he had no reason to be in Manhattan that day, and the Department provided none. Further, while his tour was scheduled to end at 1300 hours, he signed out, from an outside wire, at 1330 hours. Yet he submitted no overtime request for this date. If he was actually trying to steal the time on this date, the 1330 hours sign-out time, without an overtime request, makes no sense.

It was not useful for the Department to lump an unspecified number of leaving-early allegations together as was done in Specification 6. The case could have been much more easily managed for all concerned if the incidents were charged as discrete acts. Nevertheless, Respondent Vecchio did leave early on three occasions. Accordingly, the Court finds him Partially Guilty of Specification 6.

#### Specification Nos. 7 & 9

Specification 7 alleges that on "approximately seven" occasions, Respondent Vecchio committed Petit Larceny (Penal Law § 155.25), and violated the Patrol Guide by acting contrary to the good order, efficiency or discipline of the Department, by improperly submitting Overtime Reports for overtime that he did not perform. Specification 9 alleges that on "approximately six" occasions, Respondent Vecchio committed the crime of Offering a False Instrument for Filing in the Second Degree (Penal Law § 175.30) by filing the false overtime requests. The reason for the different amount of charged offenses is not clear. There were seven dates for which the Department presented allegations of false overtime: May 9, May 16, May 17, June 13, July 12, July 14, and August 9, 2005.

However, the only overtime abuse the Department proved was on the three occasions Respondent Vecchio filed Overtime Reports for time he spent as a defendant in SICC. As with Specification 6, supra, the Department did not prove that Respondent Vecchio had the criminal intent to steal, or that he knew the overtime requests were false in that he knew he was not entitled to claim those hours as overtime. Therefore, the Court finds Respondent Vecchio Partially Guilty of Specifications 7 and 9 as to the Patrol Guide sections only, and solely as to the aforementioned three dates: March 9, March 23, and May 11, 2005.

#### PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent Vecchio was appointed to the Department on April 30, 1995, as a result of the Housing Authority Police Department merger. Respondent Holbert was appointed to the Department on March 24, 1988. Information from their personnel folders that was considered in making these penalty recommendations is contained in the attached confidential memoranda. Respondent Vecchio also submitted several letters from acquaintances, testifying to his good character. These were admitted as CX-2 solely on the issue of penalty.

Respondent Vecchio has been found Guilty of, inter alia, Official Misconduct relating to his nude photography of two women who had business with the Department, one a complaining witness in a rape case, and the other an 18-year-old leaving-the-scene arrestee. This on-duty misconduct demonstrates Respondent Vecchio's lack of fitness to serve as a member of this Department, see Matter of Jackson v. Kerik, 295 A.D.2d 193 (1st Dept. 2002) (confirming termination for on-duty consensual sex with prostitute in bathroom of DA's Office; the conduct

gravely compromised the officer's and Department's integrity, and was a sound basis to terminate him).

In addition, had S.L.'s rape case gone forward, the fact that Respondent Vecchio took photographs of the complainant and then kept them in his gun locker instead of notifying the DA's Office could have caused serious problems for the prosecution in terms of their discovery obligations. See generally Criminal Procedure Law § 240.20 (1)(d) (in cases after indictment or information is filed, upon defendant's demand to produce, People must disclose any "photograph or drawing relating to the criminal action or proceeding which was made or competed by a public servant engaged in law enforcement activity"); *Disciplinary Case No. 72515/97* (termination for officer who, while on duty, found a videotape indicating it contained child pornography, took it home, viewed it, then tore off the label, confirmed sub nom. Matter of Titone v. Safir, 277 A.D.2d 161, 162 [1st Dept. 2000] [penalty of termination did not shock Court's sense of fairness]).

In sum, Respondent Vecchio's actions were injurious to the trust that the citizens of New York are entitled to place in their Police Department. Cf. Disciplinary Case No. 71821/97 (termination for officer who, after being asked to counsel an 18-year-old whose Muslim parents had found her drinking, instead had her wait for him to get off duty, bought cigarettes, beer and condoms, and took her to a park and had consensual sex with her, confirmed sub nom. Matter of Dobrin v. Safir, 272 A.D.2d 134, 135 [1st Dept. 2000] [officer's "continued defense of the insignificance, if not the propriety, of his actions, even in this Court, further lends support to the penalty imposed"])). He caused embarrassment to the Department and brought its reputation into disrepute. His actions regarding time abuse, in particular his appearances at SICC for his own case while on duty, were in violation of the Patrol Guide and demonstrate a disregard for



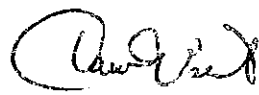
Department rules and procedures. Accordingly, the Court recommends that Respondent Vecchio be terminated from employment with the Department.

Respondent Holbert has been found Guilty of, inter alia, impeding the investigation into Respondent Vecchio's misconduct by giving false statements at two Official Department Interviews. The Department's investigators needed to determine exactly how the photographs of S.L. ended up not only being taken, but found in Respondent Vecchio's locker. By giving false statements to the investigators, Respondent Holbert not only perpetuated the underlying misconduct of Respondent Vecchio, but also blocked the investigators' attempt to determine what really happened. That was no small task in this case. Termination is an appropriate penalty for this kind of misconduct. Cf. Matter of Harp v. New York City Police Dep't, 96 N.Y.2d 892, 893-94 (2001) (where officer, an IAB member, was found Guilty of making false and misleading statements at official interview in connection with IAB investigation into his activities, Court of Appeals could not say that penalty of termination shocked the judicial conscience); Matter of Marcondes v. Ward, 172 A.D.2d 318 (1st Dept. 1991) (officer was found Guilty of, inter alia, being absent without leave, failing to safeguard weapon, and impeding investigation into its loss; penalty of termination not inappropriate considering the misconduct, prior record, and "compelling interest of maintaining internal discipline in the police department"). In view of the Department's strong policy concerning false statements made in the course of official Department investigations, see Patrol Guide § 203-08, the Court recommends that Respondent Holbert also be terminated.

APPROVED [IN PART]

SEP 05 2008  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

Respectfully submitted,

  
David S. Weisel  
Assistant Deputy Commissioner – Trials